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EXECUTIVE SUMMARY

In the decade after its enactment, the Americans with Disabilities Act (ADA) has begun to transform the social fabric of our nation. It has brought the principle of disability civil rights into the mainstream of public policy. The law, coupled with the disability rights movement that produced a climate in which such legislation could be enacted, has fundamentally affected the way Americans perceive disability. The placement of disability discrimination on a par with race or gender discrimination exposed the common experiences of prejudice and segregation and provided clear rationale for the elimination of disability discrimination in this country. ADA has become a symbol, internationally, of the promise of human and civil rights and a blueprint for policy development in other countries. It has permanently changed the architectural and telecommunications landscape of the United States. It has created increased recognition and understanding of the manner in which the physical and social environment can pose discriminatory barriers to people with disabilities. It is a vehicle through which people with disabilities have made their political influence felt, and it continues to be a unifying focus for the disability rights movement.

Although ADA signifies the achievement of a bipartisan political movement of people with disabilities, ADA is not self-acting in ensuring that its provisions are fully and finally implemented and enforced. Federal Government commitment to ADA's timely implementation and effective enforcement is essential to fulfill the law's promises. Indeed, Congress declared in ADA its intent that the Federal Government play a "central role" in enforcing the requirements of the law.¹ As they did with the earlier civil rights laws, federal enforcement agencies have a key responsibility to advance the interpretation and implementation of ADA through enforcement actions, policy guidance, and participation in the development of precedent-setting court decisions. The current administration has had the unique task of overseeing federal implementation and enforcement of ADA in its embryonic state, with the concomitant opportunities to direct clear and effective strategies for ending centuries of discrimination and segregation by disability.

This report reveals that while this administration has consistently asserted its strong support for the civil rights of people with disabilities, the federal agencies charged with enforcement and policy development under ADA, to varying degrees, have been overly cautious, reactive, and lacking any coherent and unifying national strategy. Enforcement efforts are largely shaped by a case-by-case approach based on individual complaints rather than an approach based on compliance monitoring and a cohesive, proactive enforcement strategy. In addition, enforcement agencies have not consistently taken leadership roles in clarifying frontier or emergent issues — issues that, even after nearly 10 years of enforcement experience, continue to be controversial, complex, unexpected, and challenging.

2

discrimination to continue without sufficient challenge in some quarters. Arguably, the major impact of this weak enforcement environment has been its contribution to the problematic federal court interpretations of key ADA principles that have unjustly narrowed the scope of the law's protections.

The Promise of Inclusion and Equal Opportunity

The passage of ADA resulted from a long struggle by Americans with disabilities to bring an end to their inferior status and unequal protection under law in our society. Census data, national polls, and other studies had long documented the severe social, vocational, economic and educational disadvantages of people with disabilities.⁴ Besides widespread discrimination in employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services,⁵ people with disabilities faced the additional burden of having little or no legal recourse to redress their multidimensional exclusion.⁶

Not only did ADA directly address discrimination in terms of its personal impact on the lives of people with disabilities, it also addressed the huge economic toll on the nation resulting from "billions of dollars in unnecessary expenses resulting from dependency and nonproductivity."⁷ These problems resulted not only from the barriers created by lack of access to education and employment. Federal policy itself perpetuated dependency through disability programs "reflect[ing] an overemphasis on income support and an underemphasis on initiatives for equal opportunity, independence, prevention, and self-sufficiency."⁸

In a bipartisan recognition of the moral and economic benefits to be realized, not only to people with disabilities as individuals but to the nation overall,⁹ Congress enacted ADA "(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities."¹⁰

Under ADA, the U.S. Department of Justice (DOJ), the U.S. Equal Employment Opportunity Commission (EEOC), the U.S. Department of Transportation (DOT), and the Federal Communications Commission (FCC) have primary federal enforcement responsibilities as the law applies respectively to private employers, state and local governments, all facilities and programs open to the public, and providers of telecommunications equipment and services. The mechanisms and enforcement actions of these agencies related to complaint handling and compliance monitoring, as well as technical assistance and public information, are examined and assessed here along with cross-cutting issues for federal enforcement of ADA overall.

The National Council on Disability (NCD), as the independent federal agency that first proposed and drafted ADA, undertook this report in response to two mandates: a congressional mandate to monitor the implementation of ADA and a grassroots mandate to work with federal agencies toward more vigorous enforcement of disability civil rights laws.¹¹ This report, the third in a series of independent analyses by NCD of federal enforcement of civil rights laws, assesses a decade of ADA implementation within the federal enforcement agencies as well as the net impact arising from their collective enforcement activities on overall ADA implementation, including emerging issues raised by recent Supreme Court decisions.

Halting, Reactive Leadership by Federal Enforcement Agencies

While federal agencies have complied with their obligation to put the required regulations and complaint-handling procedures in place, they have yet to develop a cohesive, overall plan for ADA implementation and enforcement. Across the various enforcement agencies, the visible enforcement activities involve handling complaints and filing lawsuits. These are reactive methods of enforcement. Proactive strategic enforcement activities are less evident. Little compliance monitoring has been incorporated into ADA enforcement. Enforcement efforts seem more focused on "micro," individual cases. This means lost opportunities, because findings at the individual level often do not lead to an examination of

larger systemic issues. Overall, the federal enforcement effort has been uneven, lacking in robustness, and suffering from low visibility in many areas.

The overall impact of ADA has been seriously diminished by the lack of sufficient leadership in the development of a vision for ADA enforcement across the various agencies. Although heads of federal enforcement agencies have consistently expressed a commitment to the assertive implementation of ADA's requirements, their support has not translated into coordinated and authoritative enforcement leadership at the staff level. The lack of leadership and strategy has been particularly troubling, given that the federal courts have been dismantling the law's protections and routinely disregarding the positions of the federal agencies on critical issues such as the definition of the protected class, the appropriate analysis for determining the reasonableness of a particular accommodation, and the constitutionality of Title II of ADA.

In the individual federal agencies, a lack of leadership frequently manifests itself as inconsistency in the way an agency carries out its enforcement responsibilities. The Department of Transportation is one of the clearest examples of inconsistent intraagency enforcement activity. Six quasi-independent modes within DOT are responsible for enforcing the many transportation provisions of ADA. Each mode is different, sometimes strikingly so, in the interpretation of ADA requirements, the approach to complaint investigation, and the priority placed on public education. Some modes habitually gave the covered entities broad discretion in meeting ADA's accessibility requirements and timetables, while others communicated a clear expectation of timely compliance. While some modes were proactive in disseminating public education information with specific information to consumers about their rights, others provided only the most general information on grounds that it was not within their purview to provide more specific information about rights under the law. This kind of inconsistency greatly undercut DOT's overall effectiveness in establishing an expectation of compliance with ADA's nondiscrimination mandate among all the covered entities within its purview.

While all federal agencies share leadership responsibility for the effective administration of ADA, the broad ADA enforcement authority of the Department of Justice makes it the appropriate agency for directing the overall enforcement strategy. Had all the federal agencies worked more closely in collaboration with each other and stakeholders on developing a national strategy, ADA would likely be in a much stronger position as we mark the 10th anniversary of its passage. The current challenges to Title II of ADA illustrate the critical necessity of cooperation, coordination, and collaboration among federal agencies charged with ADA enforcement. The agencies have engaged in some collaboration, and they meet regularly as a group. However, insufficient collaboration takes place for the Title II referral process, which involves eight different cabinet-level agencies in complaint handling and enforcement and the Department of Justice for litigation of Title II violations. DOJ has not exercised enough oversight and tracking of Title II complaints, and the seven referral agencies have not sufficiently cooperated with DOJ to prepare and refer cases that would advance the interpretation of ADA. For example, at the time research for this report was completed, the Department of Transportation had never referred findings of discrimination resulting from any ADA complaint to DOJ for litigation. The development of Title II case law has been limited by the few referrals of Title II violations from the agencies to the DOJ for litigation. When it has had the opportunity to litigate referred complaints, DOJ has consistently furthered the goal of effective and instructive implementation of ADA by taking strong and appropriate stances on issues.

The overall record indicates that the enforcement agencies have been hesitant to exercise leadership in litigating difficult or controversial issues, or to maintain sufficiently rigorous positions in settlement negotiations. The difference is quite dramatic when an agency manifests strong leadership, takes a definitive and enlightened position on an issue, and advocates robustly for it, as EEOC did with reversing a disturbing trend in the case law whereby individuals were being estopped from pursuing employment discrimination suits under ADA if they had applied for disability benefits after being terminated. In contrast, when an agency forsakes a leadership role, takes an equivocal and muddled position, and plays only a minor and somewhat negative role in the resolution of an issue, as EEOC did in

its confined, technical approach to the definition of "disability," it may contribute to an adverse climate such as that which eventually culminated in the Supreme Court decisions restrictively construing the definition.

In many of the most important policy issues for ADA, such as the definition of disability and the application of the ADA requirement for public services in the most integrated setting, the federal agencies have too often waited for the private bar to bring the key litigation. Federal agencies have recurrently entered important cases late in their progression via amicus participation. Moreover, federal agencies generally have not demonstrated a proactive strategy for acting quickly to limit the impact of court decisions that have eroded important protections of ADA. Nor is a strategy evident for selecting and litigating ADA cases against powerful entities that interact with large numbers of people daily. Despite the slow increase of class action litigation overall, far too few class cases are developed and litigated compared with individual plaintiff cases. Finally, our investigators observed a lack of coordination on case selection and overall litigation strategy within and among agency field offices engaged in litigation.

Early and proactive stances on the interpretation of the law through regulations and subregulatory policy guidance have a critical influence in shaping how the law will be implemented by the stakeholder communities and interpreted by the courts. Formal and informal guidance from federal agencies in understanding the law's requirements serve both to encourage compliance and reduce lawsuits challenging the law's reach. The Department of Justice has made minimal use of its authority to issue additional regulations and subregulatory guidance under ADA. DOJ has taken constructive policy positions primarily in the context of litigation. For example, DOJ has been criticized for not providing timely guidance asserting that disadvantageous insurance terms or coverage based on distinctions between physical and mental impairment without actuarial justification is discrimination. Many view this void as having contributed to the stream of lawsuits challenging the inclusion of insurance under Title III. EEOC has often effectively used subregulatory guidance to promote the implementation of Title I requirements. In the face of an active movement to

exclude people with psychiatric disabilities from the protections of the law, EEOC's timely guidance on how the ADA nondiscrimination mandate applies to people with psychiatric disabilities has been significant in forestalling this outcome. Unfortunately, however, EEOC has at times used subregulatory and other guidance documents to propound misguided policy positions, including its overly technical approach to the definition of disability, the "danger to self" criterion in the "direct threat" standard, a duration standard for disabilities, and others described in this report.

The nature or extent of inaccurate and misleading negative media portrayals of ADA surfaced at several points in the law's first 10 years and continue to this day. Enforcement agencies have not been consistently stalwart in their reaction to high-profile stories and broadcasts incorrectly portraying ADA and its objectives. A steady stream of inaccurate and misleading media portrayals of ADA have undermined public support for ADA, caused a backlash against the expansion of the civil rights of individuals with disabilities, and perhaps fostered a perception that noncompliance was not an unreasonable response to an "excessive" mandate. The absence of strong and visible Federal Government leadership has contributed to the concern that there is little balance in the public discourse on ADA and a general public misunderstanding of the aims and requirements of ADA. It has also allowed ADA's detractors to develop a mainstream reputation for hard-hitting, objective criticism that is not well deserved. The challenge for the ADA enforcement agencies is to find the means to reverse the negative effects of years of public misrepresentation of the law before public opposition reaches a critical mass.

Justice Delayed

Under its current leadership, federal enforcement agencies have steadily improved the efficiency and procedural consistency in their enforcement activities. Nevertheless, ADA enforcement agencies remain agonizingly slow in the performance of their enforcement duties. The most noticeable problems involve complaint handling, with significant variations in the processes across the different agencies. These differences may be attributed in part to the role that complaint processing has in an agency's overall mission. While the Department

of Justice refers or resolves nearly every Title II complaint, it does not open for investigation most Title III complaints. For Title III, DOJ is given authority to pursue complaints and litigation only selectively, focusing on pattern or practice cases and on instances that raise an issue of general public importance. Although its complaint procedures are evolving, DOJ is often very slow in referring Title II complaints or communicating with complainants about its selective handling of Title III complaints. The EEOC has significantly reduced the time required to process most complaints, but in the initial years of ADA, the processing time for Title I complaints was also very slow, in many cases more than two years. In some of the referral agencies, procedures for complaint handling are not well developed or documented.

The net impact of these slow actions has been to mute enforcement, unnecessarily extend the effects of discrimination for victims, and undermine the confidence of charging parties and covered entities in the ability of the federal agencies to investigate discrimination complaints in a timely, fair, and effective manner.

Despite the fact that ADA requires existing agencies to take on new tasks and activities, the budgets and approved staffing levels of these agencies have not changed in a commensurate manner. At the EEOC, the first real increases in budget did not occur until nine years after ADA implementation began. Both the EEOC and the Disability Rights Section of the Department of Justice received increases for ADA enforcement in fiscal 1999. However, the EEOC saw a large increase in its caseload following the implementation of ADA in 1992. At the Department of Justice and in the operating administrations in the Department of Transportation, new responsibilities for complaint processing and compliance reviews had to be developed with no additional funds.

Congress has not provided adequate funding for true enforcement commensurate with the ADA's strong mandates, even when the administration has assertively presented the need for greater resources to properly enforce the law. While Congress recently has increased funding for some agencies' ADA enforcement activities, the long period of substantially inadequate funding has taken its toll. Even with the most recent increases, all ADA enforcement agencies still require additional resources, not only for personnel but to purchase

technology and data management systems to enable them to efficiently and correctly perform their enforcement responsibilities. As a result of insufficient funding and staff, aspects of enforcement—such as the certification of building codes, the monitoring of transit system accessibility, the issuance of architectural or transportation standards as regulation, and the time required to determine whether or not to file a lawsuit or intervene in an ongoing case—have proceeded slowly.

In part to make up for inadequate investigative staff and resources, the enforcement agencies have in common an increased use of mediation (alternate dispute resolution or ADR), not only for disability civil rights laws but for all civil rights laws. The agencies report success and satisfaction with their limited mediation experiences to date. The use of mediation by agencies enforcing ADA will likely continue to increase because Congress mandates and supports it. Thus, it is vitally important that mediation be carried out in a way that helps expedite successful compliance with ADA and does not compromise an individual's civil rights. This requires careful agency oversight of the mediation activities and of the settlements achieved through mediation. The Department of Justice currently does not involve itself in the mediation process in either an oversight role or as a signatory to the agreement as a means of securing enforcement, preferring to rely on trained mediators to attain a satisfactory outcome.

The examination of mediation in the different venues elicited many common questions. The issues raised by these questions are largely beyond the scope of this report and require further study. There is a real risk that the complainant may not be on a level playing field with the respondent. The skill and knowledge of the mediator, whether the complainant is alone or comes with the support of an advocate, and whether representation by an attorney is equal (e.g., neither side has an attorney or they are both represented) are key factors.

Mixed Results from Outreach Efforts

ADA specifically directs agencies to engage in technical assistance and to produce technical assistance materials. The enforcement agencies have generally met their obligations

in this area; some excellent technical assistance documents have been published, and large-scale, ongoing training and public information efforts have occurred. However, there has never been a governmentwide evaluation of the effectiveness of these efforts nor a reassessment of the outreach strategy. Critical pockets remain where additional information and assistance are needed. In the areas of employment and transportation, much of the focus has been on the covered entities. Less information has been targeted to people with disabilities so they know their rights and how to pursue enforcement of them.

There have been few efforts to ensure that technical assistance materials and training opportunities in culturally appropriate formats are equally available to underserved individuals and covered entities in rural and culturally diverse communities, people with cognitive disabilities, people labeled with psychiatric disabilities, people living in institutions, and youth and young adults. While some federal agencies have made varying degrees of progress in tailoring their outreach and public education to address the needs of these diverse groups, there is a notable dearth of such materials in relation to the need of traditionally underserved groups for information about ADA and how to access their rights. Resource limitations have contributed to deficits in technical assistance and other outreach activities. Technical assistance from the Department of Justice and other agencies in emergent areas of ADA policy and enforcement, such as genetic discrimination or Web site accessibility requirements, is also needed.

Insufficient Consultation in Developing Enforcement Priorities

Although enforcement agencies all have some relationship with the disability community, there are few opportunities for appropriate input from people with disabilities on setting overall priorities for policy development and litigation, developing appropriate strategies for mitigating the impact of negative court decisions, determining appropriate and feasible accommodations, and advising on the design and dissemination of public education materials targeting specific constituent groups of the disability community, such as people from diverse cultures, people with limited or no English proficiency, those living in institutions, those with cognitive disabilities, and those labeled with psychiatric disabilities.

materials targeting specific constituent groups of the disability community, such as people from diverse cultures, people with limited or no English proficiency, those living in institutions, those with cognitive disabilities, and those labeled with psychiatric disabilities.

Input from the disability community is especially important in verifying that covered entities have taken action to correct ADA violations. As an example, some Department of Transportation modes routinely rely on self-reporting by local transportation authorities to verify that required corrections of noncompliant conditions were implemented, and do not consult with the affected disability community to determine whether the corrective action actually took place.

Recommendations

NCD makes the following preliminary recommendations to strengthen federal enforcement of ADA:

The Department of Justice should provide robust and assertive leadership for ADA implementation and to develop a strategic vision and plan for ADA enforcement across the Federal Government.

Given its broad ADA enforcement authority, the Department of Justice should assume responsibility for leading an effort to develop a strategic plan for ADA implementation and enforcement, and the attorney general should serve as the spokesperson for the overall federal vision and strategy for ADA implementation. In providing leadership for ADA implementation, the Department of Justice should require annual reporting from the other agencies with ADA enforcement responsibilities and should itself issue an annual report to the president and Congress on the issues and activities associated with ADA implementation and enforcement. Leadership from the Department of Justice should focus on the "big picture" and emergent ADA issues, and on ensuring that ADA enforcement includes not only complaint processing but compliance monitoring, strategic litigation to develop ADA case law, coordination among the enforcement agencies, ongoing issuance of subregulatory guidance and information, and outreach so that ADA is correctly understood by the covered entities, people with disabilities, the media, and the public.

The Departments of Justice and Transportation, the Equal Employment Opportunity Commission (EEOC), and the Title II Referral agencies should strengthen methods for the timely and effective enforcement of ADA.

Complaints need to be processed by a more consumer-responsive and credible enforcement system that provides timely and high-quality investigations, findings, and resolutions. All agencies should implement systems so that persons who file a discrimination complaint receive a prompt acknowledgment from the processing agency; subsequent communication that updates the complainant at least every three months on the status or progress of the complaint; and information from the very start about how the complaint investigation process works and what to expect from the agency handling the complaint. Agencies should work to shorten the time required to complete a thorough assessment of the facts and merits of a complaint. The EEOC, where complaint handling is a major function, has a well-developed and documented set of procedures. DOT and DOJ, agencies with broad missions and in which ADA complaint investigation is one of many complex enforcement activities, generally have less clearly articulated procedures. Greater exchange of expertise about methods for investigating and documenting complaint processing should take place to improve complaint handling across all titles of ADA. The apparent thoroughness and competence of the complaint investigation, finding, and resolution activities need to be improved to achieve greater credibility with both complainants and respondents.

The Department of Justice should make use of regulations, subregulatory guidance, and technical assistance documents to take a leadership role on policy issues in Title II and Title III enforcement and to help covered entities understand and comply with their responsibilities. The EEOC should issue regulatory, subregulatory, and technical assistance documents, as necessary, to repudiate the misguided and erroneous prior policy positions, identified in the report, that it has enunciated or contributed to. In particular, the EEOC should issue subregulatory guidance to clarify the breadth of the third prong of the definition of disability and the inappropriateness of technical constraints on the concept of limitations on the major life activity of working, toward the end of persuading courts to focus more on the allegedly discriminatory actions of employers rather than the characteristics of and precise degree of limitations of the complainant.

Agency resources are a key influence on the ability of an agency to effectively meet its enforcement responsibilities. The increases in the FY 1999 budget for ADA enforcement at the EEOC and the Department of Justice were badly needed. Even with these increases, more resources are needed to enable the agencies to hire additional personnel, and provide increased staff training, and to support the development and maintenance of information management systems and other technology in the agencies. Congress must allocate additional resources with clear funding direction that would strengthen the agencies' capacity for more effective, efficient, and timely enforcement of ADA. Increased resources devoted to ADA enforcement would mean that more cases could be opened for investigation and litigation; that regulations, subregulatory guidance, and technical assistance materials could be developed more expeditiously and on a broader scale; that more compliance reviews could be conducted; and that systems improvements could be introduced that would lead to better tracking of complaints and referrals, more useful enforcement data, and quicker responses to complainants.

To reinforce the principles of ADA and to clarify the interpretation of key provisions of the law, the federal enforcement agencies need to pursue strategic litigation more vigorously. Federal agencies should also increase their use of strategic litigation and class action cases to bring broad sectors of employment, large employers, and large corporate providers of public accommodations into ADA compliance.

Federal agencies must also exercise strong oversight of the mediation process and ensure that complainants' rights are protected. Such oversight should focus on ensuring that agreements do not violate the requirements of ADA and on the competence of the mediators, both at mediation and with respect to disability issues and ADA. A systematic study should be conducted on how the mediation of ADA cases is working. A cadre of trained and paid mediation support personnel whose task is to help the complainant through the process of mediation should be developed. The enforcement agencies should adopt standards along the lines of the ADA Mediation Guidelines (see Appendix C) to govern mediation of ADA disputes.

Federal enforcement agencies should ensure that staff members are knowledgeable and current on matters relating to ADA enforcement. Staff training, a key method for ensuring that staff are knowledgeable, has occurred and is continuing to occur, especially at the EEOC. However, training that follows up, refreshes, or updates earlier training is needed. In some of the Title II referral agencies, the legal expertise of the investigative and legal staff with respect to ADA jurisdictional issues also needs to be improved. Many of the DOT operating administrations, especially, need to provide training in various areas, including investigation, legal jurisdictional issues, ADA, and disability issues.

The federal enforcement agencies should engage in more outreach, training, and collaboration with the disability community.

Increased outreach to the disability community—people with disabilities and the disability advocacy and legal communities—is required. The enforcement agencies all have some relationship with the disability community, but they would benefit from greater input from these groups in setting their priorities for policy development and litigation, in determining feasible accommodations, and in identifying areas in which additional agency staff training would be helpful. The enforcement agencies should engage in structured collaboration with private attorneys specializing in disability law to advance the litigation activities of the agencies. Follow-up, refresher, or updated training of the disability community should be provided by all the enforcement agencies.

Federal enforcement agencies should make a concerted effort to develop and effectively disseminate public education materials geared to the unique needs of many of the constituent groups within the disability community. Many more materials that effectively accommodate the needs of people with disabilities from diverse cultures and people with mental disabilities are needed to improve general awareness among these groups of their rights and how to exercise them. Information dissemination strategies must accommodate the limited contact with the outside world available to people living in institutions, especially people with mental disabilities, for effective outreach to these populations.

The Department of Justice, the Equal Employment Opportunity Commission, and the other federal agencies charged with ADA enforcement should promote proactive messages for media coverage of ADA.

The enforcement agencies should embark on a proactive public educational media campaign for ADA. Such a campaign does not require that the agencies "take sides" in a fashion inappropriate for an enforcement agency. It does mean making use of the media to more clearly explain the requirements of ADA, its rationale, and the ways in which ADA protections are a benefit to us all. The campaign must also include strategies to respond to inaccurate and misleading negative portrayals of ADA in the media.

Conclusion

ADA's comprehensive national mandate for the elimination of discrimination based on disability raises the expectation that the "full force of the federal law will come down on anyone who continues to subject persons with disabilities to discrimination by segregating them, by excluding them, or by denying them equally effective and meaningful opportunity to benefit from all aspects of life in America."¹² The National Council on Disability understands its statutory mission to monitor the implementation, effectiveness, and impact of ADA in light of this mandate. As the Supreme Court prepares to address the constitutionality of ADA, it is more important than ever that federal agencies charged with the law's enforcement come together in a unified strategy to protect and advance ADA.

As the nation approaches the upcoming presidential elections in the fall of this year, it is with a greater awareness than ever of disability and its impact. The disability community as a whole is a more informed constituency, more keenly aware of its right to equality of opportunity under the law. This report provides a blueprint for the next administration to remedy the shortcomings that have hindered ADA compliance and enforcement until now. NCD stands ready to work with our sister agencies and other stakeholders inside and outside the government to develop that strategy. Indeed, throughout the preparation of this report, federal agencies have shown great willingness to collaborate with NCD in advancing the broad and enlightened enforcement of ADA. Together, as we stand at the dawn of a new century, let us recommit to the vision of an America that keeps its promise of "liberty and justice for all."

Endnotes

1. Americans with Disabilities Act, 42 U.S.C. 12101(b)(3).
2. Timothy M. Cook, *The Americans with Disabilities Act: The Move to Integration*, 64 *Temp. L. Rev.* 393, 469 (Summer 1991).
3. *Id.* at 397.
4. 42 U.S.C. §12101(a)(6). For a discussion about the problems with and limitations on census data regarding people with disabilities, see National Council on Disability, *Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities—With Legislative Recommendations*, February 1986, at 3–5. The “national polls” reference is primarily to polls conducted by Louis Harris and Associates. In 1986, the Harris organization undertook the first-ever nationwide telephone poll of persons with disabilities. Louis Harris & Assocs., *The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream* (1986).
5. 42 U.S.C. §§12101(a)(2) and (3).
6. 42 U.S.C. §12101(a)(4).
7. 42 U.S.C. §12101(a)(9).
8. National Council on Disability, *Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities—With Legislative Recommendations*, February 1986, p. 12.
9. See S. Rep. No. 116, 101st Cong., 1st Sess. 101 (1989) at 16–18.
10. 42 U.S.C. §12101(b). *Cf. Toward Independence*, pp. 18–19.
11. National Council on Disability, *Achieving Independence: The Challenge for the 21st Century*, July 26, 1996, pp. 155, 157.
12. 135 Cong. Rec. S4984 (daily ed. May 9, 1989) (statement of Sen. Harkin).

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EEOC RECEIVES REPORT ON ADA ENFORCEMENT BY NATIONAL COUNCIL ON DISABILITY

WASHINGTON -- The U.S. Equal Employment Opportunity Commission (EEOC) today received a report by the National Council on Disability (NCD) examining the Federal Government's enforcement of the Americans with Disabilities Act of 1990 (ADA). The report, entitled *Promises to Keep: A Decade of Federal Enforcement of the Americans with Disabilities Act*, analyzes enforcement of the Act by several federal agencies, including EEOC.

"The Commission has always welcomed the input of federal agencies and other organizations with an interest in the laws that fall under our jurisdiction. Therefore, we welcome this report and look forward to closely reviewing its recommendations," said EEOC Commissioner Paul Steven Miller. "In addition to vigorously enforcing the ADA, the Commission provides education, outreach, and technical assistance to the private sector in order to promote understanding and voluntary compliance with the Act. Such efforts have played an instrumental role in ensuring that persons with disabilities are permitted to work in environments that are free of discrimination, where they are judged by their ability to do the job, rather than on myths, fears, and stereotypes."

EEOC has enforcement authority for Title I of the ADA, which prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms and conditions of employment.

Since Title I of the ADA went into effect on July 26, 1992, the EEOC has obtained over \$300 million on behalf of more than 20,000 charging parties through its overall enforcement efforts, including settlements, conciliations, mediation, and litigation. In addition, EEOC has obtained non-monetary benefits for over 10,000 individuals under Title I. Such benefits include reasonable accommodations, policy changes, training and education, job referrals, union membership, and posting of EEO notices at job sites.

Through its administrative enforcement activities, EEOC resolves many ADA cases prior to any litigation being filed. EEOC has resolved over 130,000 ADA charges since Title I was implemented in July 1992. Between fiscal years 1993 (the first full year EEOC enforced Title I) and 1999, the number of investigative findings of "reasonable cause" that discrimination took place rose more than ten-fold from 106 to 1,665; the number of "merit resolutions" (resolutions of meritorious allegations with a favorable outcomes to charging parties) more than tripled from 1,119 to 3,965; and monetary benefits obtained for charging parties also tripled from \$15.9 million to \$49.9 million. ADA charges filed with EEOC have accounted for an average of 21.4% of the agency's caseload since FY 1993.

Since launching its voluntary national mediation program in February 1999, EEOC has mediated about 2,000 ADA charges with a success rate of over 60%. Of these mediated cases, approximately \$17.2 million in monetary benefits have been awarded to 1,530 persons. In addition, 46% of mediated ADA charges were resolved with non-monetary relief, such as reasonable accommodations, reinstatement, policy changes, and training programs.

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EEOC PRESS RELEASE – Page 2

EEOC's efforts to achieve voluntary compliance with the laws it enforces is buttressed by the ability to file litigation against businesses that fail to voluntarily conciliate EEO violations against employees and applicants. The Commission has sought to strategically and vigorously enforce all aspects of the ADA through its litigation program, which includes filings individual and class suits, and *amicus* "friend of the court" briefs. In addition, agency legal staff provides advice to district office administrative enforcement units which are responsible for investigating charges of discrimination.

On the district court level, EEOC has filed more than 350 substantive lawsuits to enforce the ADA. The Commission also has increased the percentage of its ADA class caseload from 8% of all ADA suits in FY 1996 to 22% in FY 1999. On the appellate level, EEOC has filed *amicus* briefs in dozens of cases in which it has confronted fundamental issues on how the ADA should be applied, including the critical issue of who should be protected by the Act.

In addition to enforcement and litigation, the development and issuance of policy guidance plays a central role in EEOC's efforts to promote understanding and voluntary compliance with the ADA. Besides educating employers and employees about their rights and responsibilities, the courts examine and give substantial weight to Commission policy guidance in their interpretations of significant case law. Since the ADA was enacted in 1990, EEOC has issued numerous comprehensive policy guidances and technical assistance documents addressing every aspect of employment discrimination under the ADA.

EEOC's outreach program supplements its enforcement, litigation, and policy initiatives by providing the public with a broad range of education, technical assistance, and training on the ADA and other agency-enforced statutes. EEOC makes information available on its operations, programs, and activities through printed materials (including different languages and alternate formats), its Internet web site, speeches and presentations, media relations, workshops and technical assistance programs, and by responding to public inquiries. Building on intensive outreach efforts by EEOC field offices in FY 1991-1992, the ADA was the principle topic of 3,050 outreach events between FY 1993 and 1999. In the past three years alone, approximately 126,000 people attended ADA outreach events designed to provide educational services to stakeholders and to foster on-going relationships with hundreds of individuals and organizations nationwide.

In addition to enforcing Title I of the ADA, EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, and national origin; the Age Discrimination in Employment Act, which prohibits discrimination against individuals 40 years of age or older; sections of the Civil Rights Act of 1991; the Equal Pay Act; and the Rehabilitation Act's prohibitions against disability discrimination in the federal government. Further information about the Commission is available on the agency's web site at www.eeoc.gov.

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Enforcing the ADA:

Looking Back on a Decade of Progress

A Special Tenth Anniversary Status Report from the Department of Justice



July 2000

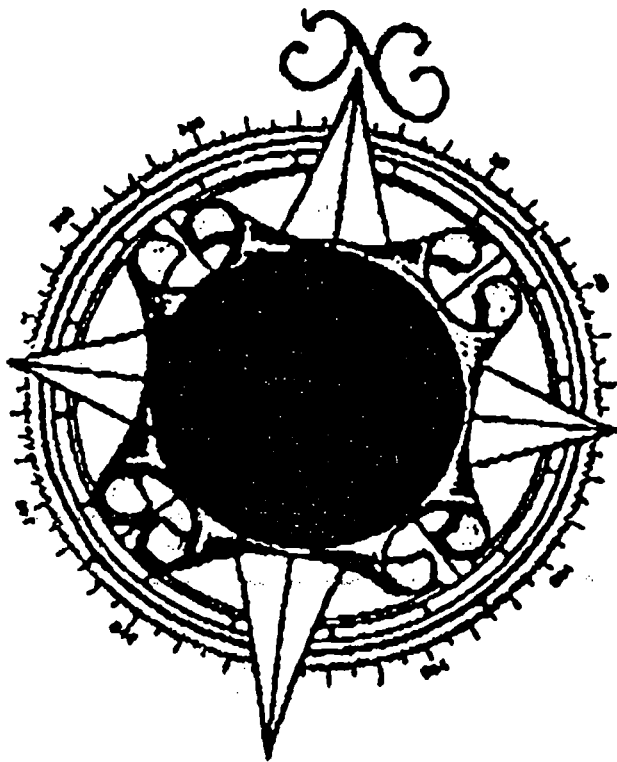
This is a special edition commemorating the tenth anniversary of the enactment of the ADA. This report, previous status reports, and a wide range of other ADA information are available through the Department's ADA Home Page on the World Wide Web (see page 38).

Michelle | Dawn | Irene | Eric -

Not the race/ethnicity statistics
on the next page. This refers to our
199,000 hires announcement. 7 Lw—

Re-charting

the Course



**First Report of the
Presidential Task
Force
on Employment
of Adults with
Disabilities**

**Presented
to the
President of the
United States**

November 15, 1998

Other important findings from the Census Bureau report dealt with issues of race and ethnicity, health insurance coverage, and perhaps most importantly from the perspective of this report, rates of employment and earnings of people with disabilities.

- **Race/Ethnicity:** The Census Bureau found some differences by race and Hispanic origin in the prevalence of disability within age groups. Within the 22-44-year-old age group, the proportion with a severe disability was 5.6 percent among whites, 11.8 percent among blacks, and 6.7 percent among people of Hispanic origin. In the 45-to-54-year-old age group, the severe disability rate was 10.5 percent among whites, 18.4 percent among blacks, and 15.7 percent among people of Hispanic origin.

- **Health Insurance Coverage:** Among people age 22 to 64 years old with no disability, 79.9 percent were covered by private health insurance, while 3.0 percent had only government coverage. In contrast, among people with a severe disability in the same age group, only 43.7 percent had private health insurance coverage, while 39.6 percent had government coverage only.

- **Employment Rates:** The employment rate for people 21 to 64 years of age was 82.1 percent among those with no disability, 76.9 percent among those with a disability that was not severe, and 26.1 percent among those with a severe disability. Data collected three years earlier for people in the same age group showed employment rates of 80.5 percent for those with no disability, 76.0 percent for those with a disability that was not severe, and 23.3 percent for those with a severe disability. The statistically significant increase in the employment rate of people with severe disabilities between 1991 and 1994 is noteworthy.

- **Earnings and Disability:** Census Bureau data also showed that, among those people who were working, the presence of a disability was associated with lower earnings. Also women with disabilities earned less than men with disabilities (McNeil, 1997).

These data suggest that while the growth in the number of people with disabilities has been accompanied by some improvement in rates of employment, there is still a high percentage of people with disabilities who are not working. For people with severe disabilities, nearly three-quarters reported being nonemployed. Data on earning levels suggest that people with disabilities who are employed are likely to be earning less than their non-disabled peers.

Some Data Suggest That Census Bureau Estimates May Be Low. Generally speaking, Census Bureau data are thought to be the most reliable estimates of disability rates and related statistical data. However, other organizations also gather data and make estimates of employment rates and other parameters related to disability. Periodically the polling firm of Louis Harris and Associates, working in collaboration with the National Organization on Disability (N.O.D.) conducts a national poll of people with disabilities to gather data on a number of issues related to employment and life quality. The N.O.D./Harris 1998 Survey of Americans with Disabilities did not reveal the gains in employment for people with disabilities suggested in findings reported by the Census Bureau.

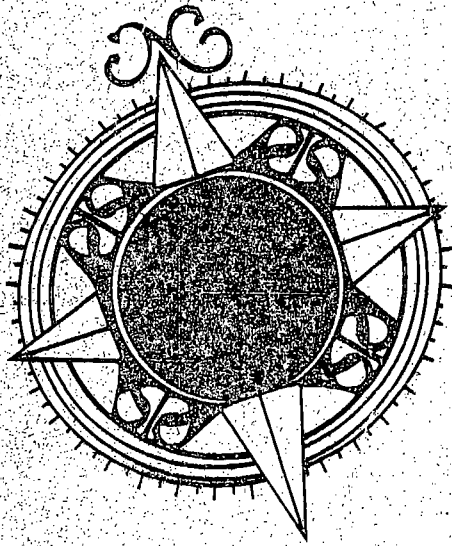
The N.O.D./Harris 1998 Survey of Americans with Disabilities found that, among working-age adults with disabilities (ages 18-64), three out of ten (29%) were working full-time or part-time, compared with eight out of ten (79%) of those without disabilities (Louis Harris and Associates, 1998). Furthermore, the findings from the poll suggest that the proportion of working-age adults with disabilities has actually declined since 1986, when one in three (34%) were working (Louis Harris and Associates, 1998). Other selected findings from the 1998 survey also are indicative of a lower quality of life enjoyed by many people with disabilities as compared with people without disabilities.

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**RE-CHARTING THE COURSE:
IF NOT NOW,
WHEN?**

**THE SECOND
REPORT OF THE
PRESIDENTIAL
TASK FORCE ON
EMPLOYMENT OF
ADULTS WITH
DISABILITIES**

**PRESENTED
TO THE
PRESIDENT OF THE
UNITED STATES**

NOVEMBER 15, 1999