No. 17-13595-BB

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

A.R., *et al.*,
Plaintiffs-Appellants,

v.

SECRETARY, FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF OF *AMICI CURIAE* FORMER MEMBERS OF CONGRESS INVOLVED IN THE PASSAGE OF THE AMERICANS WITH DISABILITIES ACT OF 1990 IN SUPPORT OF PLAINTIFF-APPELLANT THE UNITED STATES AND REVERSAL

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CERTIFICATE OF INTERESTED PERSONS
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Pursuant to 11th Cir. R. 26.1-1, 26.1-2, and 26.1-3, counsel for the *Amici Curiae* Former Members of Congress Involved in the Passage of the Americans with Disabilities Act of 1990 hereby certify that the following persons and parties may have an interest in the outcome of this case:

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Pursuant to Fed. R. App. P. 26.1, counsel for *Amici Curiae* Former Members of Congress certifies as follows: Lawyers' Committee for Civil Rights Under Law and Ogletree, Deakins, Nash, Smoak & Stewart, P.C. have no parent corporations. No publicly held company owns 10% or more of their stock.

Dated: October 25, 2017

/s/ Neil v. McKittrick
Neil V. McKittrick

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INTEREST OF *AMICI CURIAE*[1]

Amici are former members of Congress who were intimately involved in the passage of the Americans with Disabilities Act of 1990 ("ADA"). Senator Lowell P. Weicker, Jr. (R-CT) and Congressman Tony Coelho (D-CA) originally introduced the ADA in 1988, which did not pass in that congressional session. In the next session, when Congress did pass the ADA, Congressman Coelho was the chief House sponsor, Senator Tom Harkin (D-IA) was the chief Senate sponsor, and Senator Weicker testified in support of the ADA.

Amici are among the most knowledgeable people about what Congress intended to accomplish in passing the ADA. *Amici* recognized the obstacles and discrimination that people with disabilities faced and the need for a federal statute that identified the rights of people with disabilities and created a strong enforcement mechanism.

Congressman Coelho has had a special interest in disability rights because of his personal experience with an often hidden and stigmatized condition, epilepsy. Congressman Coelho lost his drivers' license and his health insurance, and was

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[1] No counsel for any party authored any part of this brief. No party or counsel for a party contributed money intended to fund the preparation or submission of this brief. No person (other than *Amici Curiae* and their counsel) contributed money intended to fund the preparation or submission of this brief. Defendant-Appellee the State of Florida refused to grant *Amici* consent to file this brief; therefore, *Amici* have filed a motion for leave to file this brief pursuant to Fed. R. App. P. 29(a)(2), (3) and 11th Cir. R. 29-1.

rejected from service in the U.S. military, all because of his epilepsy. He did not view his epilepsy as a disability, but others did, including the government and those in authority. Therefore, it was vitally important to him that the ADA cover state and local governments and that the federal government have the power to enforce the ADA.

In the ADA, *Amici* identified that one of the four purposes of the statute was to ensure the central role of the federal government in enforcing the ADA on behalf of individuals with disabilities. As the congressional architects of the ADA, *Amici* state that it was Congress' intent that the federal government have the authority to enforce Title II. In fact, it would be at odds with the purpose of the ADA to prohibit the federal government from enforcing Title II.

STATEMENT OF THE ISSUES

I. Does the phrase "person alleging discrimination" in Title II of the Americans with Disabilities Act, 42 U.S.C. § 12133 include the Attorney General?

II. Does the Attorney General have a cause of action pursuant to Section 12133 to enforce Title II of the Americans with Disabilities Act?

INTRODUCTION

When Congress passed the ADA, it found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." *See* 42 U.S.C. §

12101(a)(2) (2012). Congress intended that the ADA would "provide a clear and comprehensive national mandate for the elimination of discrimination against" individuals with disabilities and advance "the Nation's proper goals" of ensuring "equality of opportunity, full participation, independent living, and economic self-sufficiency." *See id.* § 12101(a)(7), (b)(1). Congress further intended that "the Federal Government [would] pla[y] a central role in enforcing [the ADA's] standards on behalf of individuals with disabilities." *See id.* § 12101(b)(3).

For over 20 years, the United States has advanced these purposes by initiating litigation to enforce Title II of the ADA. Until the district court dismissed this case, *sua sponte,* every court to have considered whether the United States is authorized to bring an action under Title II held that it was. The district court's dismissal not only represents a potential sea change in the judiciary's interpretation of Title II's enforcement provision, but also threatens to undermine Congress' stated purposes in passing the ADA.

SUMMARY OF ARGUMENT

The district court erred in holding that 42 U.S.C. § 12133 does not provide the Attorney General[2] with a cause of action to enforce Title II of the ADA.

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[2] *Amici* use the terms "United States," "Attorney General," and "Department of Justice" interchangeably. *See* 28 U.S.C. § 506 ("The Attorney General is the head of the Department of Justice."); *id.* § 516 ("[T]he conduct of litigation in which the United States, an agency, or officer thereof is a party . . . is reserved to

Section 12133 provides that: "The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title." Section 794a is the enforcement provision of the Rehabilitation Act of 1973, which incorporates, among other things, "[t]he remedies, procedures, and rights set forth in" the enforcement provision of Title VI of the Civil Rights Act of 1964 (the "CRA"), 42 U.S.C. § 2000d-1. The legislative environment—that is, the purpose, the subject matter, the context, the legislative history, and the executive interpretation—of Section 12133 demonstrates that Congress intended the phrase "any person alleging discrimination" to include the Attorney General. As such, the Attorney General has a cause of action, which is one of the "remedies, procedures, and rights" that Congress intended Section 12133 to borrow from Sections 794a and 2000d-1, to enforce Title II. Accordingly, the district court's *sua sponte* dismissal of the United States' Title II claim should be reversed.

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officers of the Department of Justice, under the direction of the Attorney General.").

ARGUMENT

I. Section 12133's reference to "any person" includes the Attorney General.

When "person" is used in a federal statute, its meaning "'cannot be abstractly declared, but depends upon its legislative environment." *See Sims v. U.S.*, 359 U.S. 108, 112 (1959); *accord U.S. v. Dotterweich*, 320 U.S. 277, 287 n.3 (1943) (Frankfurter, J.) (the meaning of "any person" depends on the "context and legislative history of the particular statut[e]"). Accordingly, the term "person" includes the United States if "[t]he purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute" demonstrate that Congress intended to "bring [the] nation within the scope of the law." *See U.S. v. Cooper Corp.*, 312 U.S. 600, 605 (1941); *see also, e.g., Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 91-92 (1934) (finding that the United States was a "resident" within the meaning of Section 217 of the Revenue Act of 1926, 26 U.S.C. § 958 (1926), because the Supreme Court had held that the "United States or a state is a 'person'. . . to carry out the purposes of a statute," and there was no reason to interpret "resident" differently from "person"); *FTC v. MTK Mktg., Inc.*, 149 F.3d 1036, 1038-40 (9th Cir. 1998) (applying *Cooper* and finding that the FTC was a "person" within the meaning of a California statute). The legislative environment of Section 12133 shows that Congress intended to include the Attorney General within the class of "person[s]" to whom it provided the

"remedies, procedures, and rights" of the Rehabilitation Act to redress violations of Title II.[3]

A. The legislative history of the ADA shows that the Attorney General is a "person" entitled to enforce Title II.

Committee reports from the Senate and the House of Representatives demonstrate that Congress intended to grant the Attorney General authority to enforce Title II of the ADA. Those reports state:

> It is the Committee's intent that administrative enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.
>
> The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local governments. As

[3] Instead of considering Section 12133's legislative environment, the district court held that the Attorney General could not enforce Title II of the ADA largely in reliance on *Dir., Office of Workers' Comp. Progrs., Dep't of Lab. v. Newport News Shipbuilding and Dry Dock Co.*, 514 U.S. 122 (1995). *See C.V. ex rel. Wahlquist v. Dudek*, 209 F. Supp. 3d 1279, 1282-95 (S.D. Fla. 2016) . However, the issue in *Newport News* was not whether the United States was a "person" within the meaning of a federal statute, but whether a federal agency was "adversely affected or aggrieved" by an administrative decision and consequently entitled to judicial review of that decision. *See Newport News*, 514 U.S. at 136 ("[W]e cannot find that the Director is 'adversely affected or aggrieved' within the meaning of [the relevant statute]."). No such language appears in Section 12133. Therefore, *Newport News* is inapposite.

> with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, the Federal government would use the enforcement sanctions of section 505 of the Rehabilitation Act of 1973. Because the fund termination procedures of section 505 are inapplicable to State and local government entities that do not receive Federal funds, the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.
>
> *The Department of Justice may then proceed to file suits in Federal district court*. As with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that persons with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.

See H.R. Rep. No. 101-485, pt. 2, at 98 (1990) (emphasis added); *accord* S. Rep. No. 101-116, at 57-58 (1989) (containing substantially the same language as H.R. Rep. No. 101-485, pt. 2, at 98, with exceptions not relevant here). By stating that the Department of Justice (in addition to "persons with disabilities") may commence litigation to enforce Title II, Congress unequivocally demonstrated its intent to include the Attorney General within the meaning of "any person" in Section 12133.

The district court made a "passing observatio[n]" that the legislative history cited above concerned an earlier draft of Title II that made the Rehabilitation Act's

remedies available "with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability," while the enacted version of Title II provides those remedies to "any person alleging discrimination." *See C.V.*, 209 F. Supp. 3d at 1292 n.12. However, the Court's observation actually advances the Department's position. Congress changed the relevant language not to address the Attorney General's ability to enforce Title II, but to clarify that the "Rehabilitation Act remedies are the only remedies which [T]itle II provides for violations of [T]itle II." *See* H.R. Rep. No. 101-485, pt. 3, at 52 (1990). Moreover, the language Congress ultimately included in the statute (i.e., "any person alleging discrimination") is broader than the language it replaced (i.e., "any individual who believes that he or she is being or about to be subjected to discrimination") because (1) "person" is broader than "individual," which is typically limited to natural persons, *see Clinton v. City of N.Y.*, 524 U.S. 417, 428 n.13 (1998), and (2) a person "alleging" discrimination, like the Attorney General, need not be a person who believes that he or she is being or about to be "subjected to discrimination" under the previous version of the provision. As a result, if the district court's observation has any relevance to the meaning of "person" in Section 12133, it *supports* the United States' position in this matter.

B. Subsequent amendments to the ADA did not make any change to the operative language of Title II, thereby reinforcing the conclusion that Congress intended to include the Attorney General within the "person[s]" who may enforce Title II.

The "persistence . . . of the assumption that" a statute allows for a particular enforcement mechanism, combined with "the absence of legislative action to change that assumption [is] evidence that Congress at least acquiesces in, and apparently affirms, that assumption." *Cf. Cannon v. Univ. of Chi.*, 441 U.S. 677, 702-03 (1979); *see also Tex. Dep't of Hous. and Cmty. Affairs v. Inclusive Cmties. Proj., Inc.*, 135 S. Ct. 2507, 2519-20, 192 L. Ed. 514 (2015) (finding that Congress intended the Fair Housing Act ("FHA") to provide for disparate impact claims in part because lower courts had held that such claims were cognizable, and when Congress subsequently amended the FHA, it did not preclude such claims). In 2008, Congress amended the ADA. *See* ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553 (2008). By 2008, courts had interpreted Section 12133 as providing the Attorney General with authority to enforce Title II. In fact, no court had reached a contrary conclusion at the time of the ADA Amendments Act. *See, e.g.*, *Smith v. City of Phila.*, 345 F. Supp. 2d 482, 489-90 (E.D. Pa. 2004); *U.S. v. City & Cty. of Denver*, 927 F. Supp. 1396, 1399-1400 (D. Colo. 1996). Congress, however, did not amend Section 12133 at all in the ADA Amendments Act, let alone to refute the interpretation given to it by the courts at that time. *See* Pub. L.

110-325. Congress' inaction in the face of *Smith* and *City & Cty. of Denver* is an endorsement of the interpretation of Section 12133 as providing the Attorney General with a cause of action to enforce Title II.

C. For more than 20 years, the executive branch has consistently interpreted Section 12133 as providing the Attorney General with the authority to enforce Title II of the ADA.

Since at least 1996, the Attorney General has brought actions to enforce Title II. *See, e.g., U.S. v. Harris County*, No. 4:16-CV-02331, ECF Doc. 53 (S.D. Tex. Apr. 26, 2017); *A.R. ex rel. Root v. Dudek*, 31 F. Supp. 3d 1363 (S.D. Fla. 2014) (Rosenbaum, J.); *U.S. v. N. Ill. Special Recreation Ass'n*, No. 12 C 7613, 2013 WL 1499034 (N.D. Ill. Apr. 11, 2013); *U.S. v. Virginia*, No. 3:12cv59-JAG, ECF Doc. 90 (E.D. Va. June 5, 2012); *U.S. v. City of Balt.*, Nos. JFM-09-1049 & JFM-09-1766, 2012 WL 662172 (D. Md. Feb. 29, 2012); *Smith*, 345 F. Supp. 2d 482 (intervention); *City & Cty. of Denver*, 927 F. Supp. at 1396. Every case to have addressed whether the United States had a cause of action to enforce Title II pursuant to Section 12133, except for the lower court's decision in this case, held that it did. *See Harris County*, No. 4:16-CV-02331, ECF Doc. 53, at 1-3; *A.R.*, 31 F. Supp. 3d at 1371; *Virginia*, No. 3:12cv59-JAG, ECF Doc. 90, at 3-6; *Smith*, 345 F. Supp. 2d at 489-90; *City & Cty. of Denver*, 927 F. Supp. at 1399-1400.

The executive's interpretation of Section 12133 as providing the Attorney General with a cause of action to enforce Title II across four presidential

administrations further supports the conclusion that the Attorney General is a "person" within the meaning of that section. *See Cooper*, 312 U.S. at 605, 613-14, (recognizing significance of executive's interpretation of a statute when construing the meaning of "person");[4] *cf. also, e.g.*, *MTK Mktg.*, 149 F.3d at 1039-40 (finding that the FTC was a "person" which could enforce a bond required by California's Telephone Sellers Act in part because "evidence in the record indicates that the Attorney General of California believes that FTC enforcement would serve the Act's purpose").

D. The subject matter, context, and purpose of the ADA further support the conclusion that Congress intended the Attorney General to be a person who may bring an action under Section 12133.

As a remedial statute, the ADA must be broadly construed to effectuate its goals of "provid[ing] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "ensur[ing] that the Federal Government plays a central role in enforcing [its] standards on

[4] The executive's interpretation and consistent enforcement of Title II distinguish this case from *Cooper*, in which the Court observed that the Attorney General had not brought an action to enforce the relevant statute "in the fifty years during which [it] ha[d] been in force until the present action was instituted" and had previously stated that the United States was not a party to suits pursuant to the section under consideration. *See* 312 U.S. 613-14.

behalf of individuals with disabilities." *See* 42 U.S.C. § 12101(b)(1), (3);[5] *cf. also Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 634 (1984) (recognizing the "remedial purpose of the Rehabilitation Act"). Interpreting the reference to "any person" in Section 12133 to include the Attorney General advances the purposes of eliminating discrimination against individuals with disabilities on a national basis and ensuring that the United States plays a central role in doing so. *See id.* at 633-34 (interpreting Rehabilitation Act as allowing individual to bring action against an entity that receives federal assistance in part because of "the remedial purpose of

[5] Despite the district court's suggestion to the contrary, Congress has "ma[d]e its intention to" prohibit disability discrimination on a national basis "unmistakeably [sic] clear." *See C.V.*, 209 F. Supp. 3d at 1294 (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989)). Even if Congress had not done so, what the district court characterized as federalism concerns are misplaced. None of the cases cited by the district court as illustrating its purported "federalism" concerns involved the United States' authority to bring an action against a state to enforce federal law. *See generally Printz v. U.S.*, 521 U.S. 898 (1997) (suit by county sheriffs challenging constitutionality of federal law); *New York v. U.S.*, 505 U.S. 144 (1992) (action filed by state seeking declaration that federal law was unconstitutional); *Will*, 491 U.S. at 58 (claims by individual against state and state actor); *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234 (1985) (action by individual against state); *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1 (1981) (class action against state officials); *U.S. v. Bass*, 404 U.S. 336 (1971) (criminal prosecution of individual by the United States). Indeed, two of those cases implicated Eleventh Amendment immunity, *see Will*, 491 U.S. at 65-67; *Atascadero*, 473 U.S. at 235, 237-46, which does not apply to actions brought by the United States. *See In re Witness Before Special Grand Jury 2000-2*, 288 F.3d 289, 295 (2d Cir. 2002) ("Although the Supreme Court has recognized important Eleventh Amendment limitations on the ability of private parties to bring suits against the states, it has made clear that the United States may still sue a state to enforce the nation's laws." (citing *Alden v. Maine*, 527 U.S. 706, 755 (1999); *Monaco v. Mississippi*, 292 U.S. 313, 329 (1934))).

the Rehabilitation Act 'to promote and expand employment opportunities' for the handicapped" (quoting 29 U.S.C. § 701(8) (1976))). Indeed, if the United States did not have the ability to bring a lawsuit to seek redress for a violation of Title II, the United States' "enforcement" of Title II would be toothless. Without a cause of action to enforce Title II, the Department of Justice would be able to *identify* violations of Title II through its investigatory powers, *see* 28 C.F.R. § 35.172 (2016) (outlining investigation procedure applicable to complaints of noncompliance); *id.* § 35.190(b)(6), (e) (granting the Department of Justice the authority to investigate complaints of Title II violations), and to *ask* offending public entities to comply with Title II, *see id.*§ 35.173 (describing voluntary-compliance agreements); *id.* § 35.176 (providing for an alternative-dispute resolution process), but it would not be able to *compel* compliance with Title II's prohibitions on discrimination. *See MTK Mktg.*, 149 F.3d at 1039 (finding that the FTC was a "person" who could enforce a bond required by California's Telephone Sellers Act partly because such a construction "would be consistent with the Act's purpose by furthering the goal of consumer redress").[6] Thus, the Court should

[6] Because Title II "makes *any* public entity liable for prohibited acts of discrimination, regardless of funding source," *see Shotz v. City of Plantation*, 344 F.3d 1161, 1174 (11th Cir. 2003) (emphasis in original), the United States cannot enforce Title II by terminating funding for, or withholding funding from, violators who do not receive federal funding.

interpret "any person" to include the Attorney General in light of the subject matter, purpose, and context of Title II.[7]

E. Instead of considering Section 12133's legislative environment, the district court relied almost solely on artificial canons of construction.

Canons of construction "long have been subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose." *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 (1983) (Jackson, J.) (quoting *SEC v. Joiner Corp.*, 320 U.S. 344, 350-51 (1943)); *see also, e.g.*, *Cooper*, 312 U.S. at 605 (rejecting "the application of artificial canons of construction" in determining the meaning of "person" in a federal statute). Despite their limited utility, the district court relied on three canons of construction to the exclusion of the *Cooper* factors in finding that the Attorney General does not have a cause of action to enforce Title II.

First, the district court purportedly relied on the "normal rule of statutory interpretation that identical words used in different parts of the same act are

[7] Alternatively, as the United States has pointed out in its brief, the Attorney General may enforce Title II even if this Court finds that the United States is not a "person" under Section 12133. Title II incorporates the rights, remedies, and procedures of the Rehabilitation Act, *see* 42 U.S.C. § 12133, and one of those rights, remedies, or procedures is enforcement by the Attorney General, *see* 29 U.S.C. § 794a (incorporating 42 U.S.C. § 2000d-1). Accordingly, a natural person who alleges discrimination in violation of Title II is entitled to have the Attorney General enforce Title II.

intended to have the same meaning." *See C.V.*, 209 F. Supp. 3d at 1284. Ostensibly, the district court found that Title I defined "person" as not including the Attorney General and stated, "The implication is clear: [I]f the Attorney General is not a 'person' under Title I, she is not a 'person' under Title II either." *See id.* at 1284-85. However, the court failed to cite a definition of "person" contained in Title I or anywhere else in the ADA. *See C.V.*, 209 F. Supp. 3d at 1285 (quoting *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570 (1995)). In fact, the ADA contains such a definition, and a proper application of this canon based on that definition *undermines* the district court's holding. Title I of the ADA defines "person" by incorporating the definition of that term in Title VII of the CRA. *See* 42 U.S.C. § 12111(7) (citing 42 U.S.C. § 2000e). Title VII defines "person" as including "governments" and "government agencies." *See id.* § 2000e(a). Thus, the United States and its agencies are "persons" within the plain meaning of Title VII of the CRA and, by necessity, Title I of the ADA.[8] Accordingly, if this canon of construction had any applicability to the interpretation of "person" in Section 12133, the district court should have interpreted that term consistently with Section

[8] If there were any doubt as to whether the plain meaning of Title VII's definition of "person" includes the United States (which there is not), that statute's definition of "employer" reinforces this conclusion. Title VII defines "employer" as "a person engaged in an industry affecting commerce . . . . , but such term does not include . . . the United States." *See* 42 U.S.C. § 2000e(b). If "person" did not include the United States, the exclusion of the United States from the meaning of "employer" would be unnecessary.

12111's definition to include the Attorney General. *See Shotz*, 344 F.3d at 1168 (interpreting "person" as used in Title II of the ADA to be consistent with the definition in Title I of the ADA).

Second, the district court applied the canon against surplusage, which provides "that no provision should be construed to be entirely redundant," by juxtaposing the enforcement provisions of Titles I and III of the ADA with Title II's. *See C.V.*, 209 F. Supp. 3d at 1283-84, 1285 (comparing 42 U.S.C. §§ 12117 and 12188 with 42 U.S.C. § 12133). Section 12117 (Title I) and Section 12188 (Title III) each contains the phrase "any person," which appears in Section 12133 (Title II). Unlike Section 12133, however, the other two sections also expressly provide for enforcement by the Attorney General (without relying on a cross-reference to Section 504 of the Rehabilitation Act or Title VI of the CRA). Based on that distinction, the court reasoned that, if the reference to "any person" in Section 12133 included the Attorney General, the references to the Attorney General in Sections 12117 and 12188 would be surplusage. Therefore, the court concluded that the Attorney General is not a "person" under Section 12133. *See id.*

As the Supreme Court has cautioned, "the canon against surplusage is not an absolute rule . . . [and it] 'assists only where a competing interpretation gives effect to every clause and word of a statute.'" *See Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 385 (2013) (quoting *Microsoft Corp. v. i4i Ltd.*, 564 U.S. 91, 106 (2011)).

Application of the canon here is inappropriate because no other interpretation of the term "person" in Section 12133 gives meaning to every clause and word of the ADA. Worse yet, twisting the statutory text to avoid surplusage results in a judicial amendment to Section 12133 by removing from the Attorney General a cause of action that Congress intended to provide to him.

To reach its holding, the district court effectively re-defined Section 12133, rendering Congress' decision to incorporate Section 794a into Section 12133 ineffective in the process. The district court reasoned that the Attorney General is not a "person alleging discrimination" under Section 12133, and as a result, he does not have a cause of action to enforce Title II. *See C.V.*, 209 F. Supp. 3d at 1282, 1295. Instead, according to the district court, "private parties alleging discrimination are the mechanism by which Title II's substantive guarantees are enforced." *See id.* at 1284.[9] However, Section 12133 does not selectively incorporate *some* of the "remedies, procedures, and rights set forth in" of Section

[9] To the extent that the district court reasoned that the "any person" language contained in Section 12133 limited the incorporation of Section 794a's "remedies, procedures, and rights" to persons other than the Attorney General, that reasoning is circular. *See C.V.*, 209 F. Supp. 3d at 1286-87 ("Congress did not incorporate *all* 'remedies, procedures, and rights' available under Title VI—it incorporated only those 'remedies, procedures, and rights' that may be exercised by a 'person alleging discrimination . . . .' Among the remedies, procedures, and rights available under Title VI and [the Rehabilitation Act] [a] private right of action is the only such procedure that could be 'provide[d] to' a 'person alleging discrimination.'" (emphasis in original)).

794a and, by extension, Section 2000d-1 (i.e., only the private cause of action available under those statutes); it incorporates, without qualification, the "remedies, procedures, and rights" set forth in Section 794a (and thus, those set forth in Section 2000d-1). *See* 42 U.S.C. § 12133. Among those remedies, procedures, and rights is the Attorney General's right to enforce the Rehabilitation Act and Title VI, as discussed below. Had Congress intended to exclude that right from Title II, it could have qualified its incorporation of Section 794a to make that intention clear. *Cf. U.S. v. Herring*, 602 F.2d 1220, 1223 (5th Cir. 1979)[10] ("If Congress had intended to exclude the interstate transportation of property obtained by fraud from its definition in [18 U.S.C. §] 1961, it specifically could have limited the incorporation of [18 U.S.C. §] 2314 . . . ."). It did not do so, and the district court may not rewrite Section 12133 in violation of the "cardinal rule" of construction that "courts must presume that a legislature says in a statute what it means and means in a statute what is says there" and render Congress' wholesale incorporation of Section 794a ineffective merely to avoid surplusage. *See Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

Finally, applying the doctrine of *expressio unius est exclusio alterius*, the district court reasoned that Congress' provision of a private cause of action

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[10] As the Fifth Circuit decided *Herring* before October 1, 1981, it is binding precedent in this Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

demonstrated that it "intended to bar administrative agencies, like the department, from enforcement by litigation." *See C.V.*, 209 F. Supp. 3d at 1285. This Court has recognized that *expressio unius* "has its limits and exceptions and cannot apply when the legislative history and context are contrary to such a reading of the statute." *See U.S. v. Castro*, 837 F.2d 441, 442-43 & n.2 (11th Cir. 1988). As noted above, the legislative environment surrounding Section 12133 demonstrates that applying *expressio unius* to find that the Attorney General is not a person who may enforce Title II would disregard the statute's history, context, and purpose. As a result, *expressio unius* is not useful to interpreting "any person" in Section 12133.

II. Under Section 12133, the Attorney General has a cause of action to enforce Title II of the ADA.

The district court inconsistently framed the issue that it raised *sua sponte* as (1) whether the Attorney General had "standing" to enforce Title II, *see, e.g.*, *C.V.*, 209 F. Supp. 3d at 1282, and (2) whether Section 12133 provided the Attorney General with a cause of action to enforce Title II, *see, e.g.*, *id.* at 1287. However, the inquiries are distinct: "*[S]tanding* is a question . . . whether a plaintiff is sufficiently adversary to a defendant to create an Art. III case or controversy, or at least to overcome prudential limitations on federal-court jurisdiction . . . [whereas] *cause of action* is a question whether a particular plaintiff is a member of the class of litigants that may, as a matter of law, appropriately invoke the power of the court." *See Davis v. Passman*, 442 U.S. 228, 240 n.18 (1979) (emphasis in

original). The United States has standing under Article III of the Constitution to enforce its laws. *See FEC v. Nat'l Conservative Pol. Action Comm.*, 470 U.S. 480, 485 (1985) (federal agency had standing under Article III because its interests were adverse to the defendants', the defendants violated federal law, and the "declaratory relief requested by [the agency] would aid its enforcement efforts against [the defendants] and others similarly situated"); *Sierra Club v. Two Elk Gener. Partners, Ltd.*, 646 F.3d 1258, 1277 n.8 (10th Cir. 2011) (recognizing as "axiomatic" that "[w]hen the federal government or one of its agencies brings suit, its standing is usually based on its power, defined by Congress, to redress violations of the laws of the United States"); *City of Kansas City v. Yarco Co., Inc.*, 625 F.3d 1038, 1040 (8th Cir. 2010) (United States has standing "when its laws are violated").[11] Therefore, the proper statement of the issue implicated by the district court's order is whether Congress provided the Attorney General with a cause of action to enforce Title II. As demonstrated below, Congress did so.

When Congress "adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute."

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[11] *See also In re Debs*, 158 U.S. 564, 584 (1895) (stating, without referring to Article III, that "[t]he obligations which [the United States] is under to promote the interest of all and to prevent the wrongdoing of one, resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court"),

Lorillard v. Pons, 434 U.S. 575, 581 (1978). In Section 12133, Congress expressly incorporated Section 794a, which, in turn, incorporated Section 2000d-1. *See* 42 U.S.C. § 12133 (citing 29 U.S.C. § 794a). Section 2000d-1 provides that the federal departments and agencies may enforce Title VI by terminating or refusing to grant federal funding to a recipient or "by any other means authorized by law." *See* 42 U.S.C. § 2000d-1. When Congress enacted the ADA, courts had already interpreted Sections 794a and 2000d-1 as authorizing the Attorney General to bring a civil action to enforce the Rehabilitation Act and Title VI. *See U.S. v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1050 (5th Cir. 1984) (Rehabilitation Act); *Nat'l Black Police Ass'n, Inc. v. Velde*, 712 F.2d 569, 575 (D.C. Cir. 1983) (Title VI); *U.S. v. Tatum Indep. Sch. Distr.*, 306 F. Supp. 285, 288 (E.D. Tex. 1969) (Title VI).[12] By incorporating the "remedies, procedures, and rights set forth in" Section

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[12] The district court did not reach Florida's argument that Title VI provides the Attorney General with a cause of action only to enforce contracts that contain Title VI's anti-discrimination requirements and not with a cause of action to enforce Title VI itself, and thus, Section 12133 does not contain a cause of action to enforce Title II itself. *See C.V.*, 209 F. Supp. 3d 1285-86 & n.7. However, this argument is meritless. First, Florida's premise is false: Title VI's "any other means authorized by law" language gives the Attorney General a cause of action to enforce the provisions of Title VI, not merely to enforce contractual obligations. *See Tatum*, 306 F. Supp. at 288 ("The United States is authorized to bring this action under Title VI . . . . Apart from specific statutory authorization, the United States has standing to enforce the terms and conditions on which its money allotments are made."); *cf. also U.S. v. Miami Univ.*, 294 F.3d 797, 808-09 (6th Cir. 2002) (interpreting language in 20 U.S.C. § 1234c(a) (1994) that authorized the Secretary of Education to "take . . . any action authorized by law" as giving the Secretary "statutory authority to sue" in

794a and, by extension, Section 2000d-1, Congress granted the Attorney General a cause of action to enforce Title II. *See Cannon*, 441 U.S. at 702-03 (Title IX of the CRA provided a private cause of action where the Court had "no doubt that Congress intended to create Title IX remedies comparable to those available under Title VI and that it understood Title VI as authorizing an implied private cause of action for victims of the prohibited discrimination"); *Lorillard*, 434 U.S. at 580-85 (Age Discrimination in Employment Act ("ADEA"), which incorporated the "power, remedies, and procedures" of the Fair Labor Standards Act ("FLSA"), provided trial by jury in private actions for lost wages because "[l]ong before Congress enacted the ADEA, it was well established that there was a right to a jury trial in private actions pursuant to the FLSA").[13]

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addition to the Secretary's authority to enforce "contractual obligations"). Second, even if that language does not create a cause of action to enforce Title VI (which it does), the legislative history cited above shows that Congress believed that it did when it enacted Title II. *See Cannon*, 441 U.S. at 711 ("[T]he relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law was." (quoting *Brown v. GSA*, 425 U.S. 820, 828 (1976))).

13 Relying on four sections of the United States Code, the district court concluded: "When Congress has authorized litigation by federal agencies against state and local governments, that authorization has come in clear terms and often with strict conditions." *See C.V.*, 209 F. Supp. 3d at 1294-95. This is an overstatement based on a non-representative sample. Notably, though this case does not involve an implied cause of action, the Supreme Court has gone so far as to "impl[y] causes of action in favor of the United States in cases where the statute creates a duty in favor of the public at large." *See Safe Streets Alliance v.*

CONCLUSION

The district court's order dismissing the Attorney General's Title II claim should be reversed.

Respectfully submitted,

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Hickenlooper, 859 F.3d 865, 898 (10th Cir. 2017) (quoting *Cannon*, 441 U.S. at 690 n.13).

CERTIFICATE OF COMPLIANCE

Counsel for *Amici Curiae* certify that this Brief complies with the word limit contained in Fed. R. App. P. 29(a)(5) because, excluding the words exempted from consideration by Fed. R. App. P. 32(f), this Brief contains 6,073 words, as determined by the Microsoft Word 2010 program used to prepare it.

Counsel for *Amici Curiae* further certify that this Brief complies with the typeface requirements of Fed. R. App. 32(a)(5) and the typestyle requirements of Fed. R. App. 32(a)(6) because the Brief was prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

Dated: October 25, 2017

Respectfully submitted,

/s/ Neil V. McKittrick
Neil V. McKittrick

CERTIFICATE OF SERVICE

I, Neil V. McKittrick, counsel for *Amici Curiae*, certify that, on October 25, 2017, a copy of the foregoing Brief was filed electronically through the appellate CM/ECF system with the Clerk of the Court, and that I caused a copy of the foregoing Brief to be served by U.S. Mail on the following individuals:

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ADDENDUM

ADDENDUM

grams and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXCLUSION FROM COVERAGE

Amendment by Pub. L. 100–259 not to be construed to extend application of this chapter to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

Amendment by Pub. L. 100–259 not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

CONSTRUCTION OF PROHIBITION AGAINST DISCRIMINATION UNDER FEDERAL GRANTS

Rights or protections of this section not affected by any provision of Pub. L. 98–457, see section 127 of Pub. L. 98–457, set out as a note under section 5101 of Title 42, The Public Health and Welfare.

COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this section by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11914

Ex. Ord. No. 11914, Apr. 28, 1976, 41 F.R. 17871, which related to nondiscrimination in federally assisted programs, was revoked by Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of Title 42, The Public Health and Welfare.

§ 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)) (and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation), 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. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation) 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(a), Nov. 6, 1978, 92 Stat. 2982; amended Pub. L. 111–2, § 5(c)(1), Jan. 29, 2009, 123 Stat. 6.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (a)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–2, § 5(c)(1)(A), inserted "(and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation)" after "(42 U.S.C. 2000e–5(f) through (k))".

Subsec. (a)(2). Pub. L. 111–2, § 5(c)(1)(B), inserted "(42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation)" after "1964".

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–2 effective as if enacted May 28, 2007, and applicable to certain claims of discrimination in compensation pending on or after that date, see section 6 of Pub. L. 111–2, set out as a note under section 2000e–5 of Title 42, The Public Health and Welfare.

§ 794b. Removal of architectural, transportation, or communication barriers; technical and financial assistance; compensation of experts or consultants; authorization of appropriations

(a) The Secretary may provide directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, technical assistance—

(1) to persons operating community rehabilitation programs; and

(2) with the concurrence of the Access Board established by section 792 of this title, to any public or nonprofit agency, institution, or organization;

for the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers. Any concurrence of the Access Board under paragraph (2) shall reflect its consideration of cost studies carried out by States.

(b) Any such experts or consultants, while serving pursuant to such contracts, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, including travel time, and while so serving away from their homes or regular places of business, they may be allowed trav-

Civil Service Reform Act of 1978, Public Law No. 95–454, 92 Stat. 1111 [see Tables for classification].

SEC. 5. *Implementation and Agency Responsibilities.*

5–501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2–202, or excluded from coverage, under section 3 of this order;

b. examples of discriminatory conduct;

c. applicable legal principles;

d. enforcement procedures with respect to complaints against employees;

e. remedies;

f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and

g. such other matters as deemed appropriate.

5–502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5–503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5–504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5–505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

SEC. 6. *Reporting Requirements.*

6–601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

SEC. 7. *General Provisions.*

7–701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250 [42 U.S.C. 2000d–1 note].

SEC. 8. *Judicial Review.*

8–801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*

WILLIAM J. CLINTON.

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

DELEGATION OF FUNCTIONS

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

EXECUTIVE ORDER NO. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

EXECUTIVE ORDER NO. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

EX. ORD. NO. 12250. LEADERSHIP AND COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF NONDISCRIMINATION LAWS

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided: By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. DELEGATION OF FUNCTION

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. COORDINATION OF NONDISCRIMINATION PROVISIONS

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. IMPLEMENTATION BY THE ATTORNEY GENERAL

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. AGENCY IMPLEMENTATION

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. GENERAL PROVISIONS

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 [this subchapter] shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794], shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER.

EX. ORD. NO. 13166. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Ex. Ord. No. 13166, Aug. 11, 2000, 65 F.R. 50121, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

SECTION 1. *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

SEC. 2. *Federally Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

SEC. 3. *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

SEC. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

SEC. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON.

§ 2000d–2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

CODIFICATION

"Chapter 7 of title 5" and "that chapter" substituted in text for "section 10 of the Administrative Procedure Act" and "that section", respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect

(Pub. L. 99–506, title X, §1003, Oct. 21, 1986, 100 Stat. 1845.)

REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), 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 this subchapter (§2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Rehabilitation Act Amendments of 1986, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

§2000e. Definitions

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e–2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(*l*) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e–16 of this title.

(Pub. L. 88–352, title VII, § 701, July 2, 1964, 78 Stat. 253; Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 92–261, § 2, Mar. 24, 1972, 86 Stat. 103; Pub. L. 95–555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub. L. 95–598, title III, § 330, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–166, title I, §§ 104, 109(a), Nov. 21, 1991, 105 Stat. 1074, 1077.)

REFERENCES IN TEXT

The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 449, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86–257, Sept. 14, 1959, 73 Stat. 519, which is classified principally to chapter 11 (§ 401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables.

For definition of Canal Zone, referred to in subsec. (i), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsec. (i), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–166, § 109(a), inserted at end "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

Subsecs. (*l*) to (n). Pub. L. 102–166, § 104, added subsecs. (*l*) to (n).

1986—Subsec. (b). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95–598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

Subsec. (k). Pub. L. 95–555 added subsec. (k).

1972—Subsec. (a). Pub. L. 92–261, § 2(1), included within "person" governments, governmental agencies, and political subdivisions.

Subsec. (b). Pub. L. 92–261, § 2(2), substituted "fifteen or more employees" for "twenty-five or more employees", extended coverage to include State and local governments, excepted from coverage any department or agency of the District of Columbia subject by statute to procedures of the competitive service, as defined in section 2102 of title 5, and substituted provisions under which persons having fewer than twenty-five employees during the first year after March 24, 1972, were not to be considered employers, for provisions under which persons having fewer than a specified number of employees during the first year after the effective date of this section, and the second and third years after such date were not to be considered employers.

Subsec. (c). Pub. L. 92–261, § 2(3), struck out from term "employment agency" exemption from coverage for agencies of the United States, States or political subdivisions of States, other than the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (e). Pub. L. 92–261, § 2(4), substituted provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as twenty-five or more during the first year after March 24, 1972, and fifteen or more thereafter, for provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as one hundred or more during the first year

after the effective date of this section, seventy-five or more during the second year after such date, fifty or more during the third year after such date, and twenty-five or more thereafter.

Subsec. (f). Pub. L. 92–261, § 2(5), inserted provisions enumerating persons excepted from term "employee".

Subsec. (h). Pub. L. 92–261, § 2(6), inserted ", and further includes any governmental industry, business, or activity" after "Labor-Management Reporting and Disclosure Act of 1959".

Subsec. (j). Pub. L. 92–261, § 2(7), added subsec. (j).

1966—Subsec. (b). Pub. L. 89–554 struck out proviso which stated that it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and directed the President to utilize his existing authority to effectuate this policy.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 104 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

Pub. L. 102–166, title I, § 109(c) Nov. 21, 1991, 105 Stat. 1078, provided that: "The amendments made by this section [amending this section and sections 2000e–1, 12111, and 12112 of this title] shall not apply with respect to conduct occurring before the date of the enactment of this Act [Nov. 21, 1991]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1978 AMENDMENT; EXCEPTIONS TO APPLICATION

Pub. L. 95–555, § 2, Oct. 31, 1978, 92 Stat. 2076, provided that:

"(a) Except as provided in subsection (b), the amendment made by this Act [amending this section] shall be effective on the date of enactment [Oct. 31, 1978].

"(b) The provisions of the amendment made by the first section of this Act [amending this section] shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act [Oct. 31, 1978] until 180 days after enactment of this Act."

EFFECTIVE DATE

Pub. L. 88–352, title VII, § 716(a), (b), July 2, 1964, 78 Stat. 266, provided that:

"(a) This title [enacting this section and sections 2000e–1, 2000e–4, 2000e–7 to 2000e–15 of this title, and amending sections 2204 and 2205(a)(45) of former Title 5, Executive Departments and Government Officers and Employees] shall become effective one year after the date of its enactment [July 2, 1964].

"(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 [sections 2000e–2, 2000e–3, 2000e–5, and 2000e–6 of this title] shall become effective immediately [July 2, 1964]."

GLASS CEILING

Pub. L. 102–166, title II, Nov. 21, 1991, 105 Stat. 1081–1087, entitled the "Glass Ceiling Act of 1991", established a Glass Ceiling Commission which was to submit to Congress, no later than 15 months after Nov. 21, 1991, study and recommendations concerning eliminating artificial barriers to advancement of women and minorities in the workplace and increasing opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions in businesses, authorized creation of a National Award for Diversity and Excellence in American Executive Management which was to be awarded annually by the Commission to a qualified business concern which promoted more diverse skilled work force at management and decisionmaking levels in business, and further provided for composition of Commission, powers, staff and consultants, confidentiality of information, appropriations, and termination of Commission and authority to make awards 4 years after Nov. 21, 1991.

READJUSTMENT OF BENEFITS

Pub. L. 95–555, § 3, Oct. 31, 1978, 92 Stat. 2076, provided that: "Until the expiration of a period of one year from the date of enactment of this Act [Oct. 31, 1978] or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act [amending this section and enacting provisions set out above] shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act."

EXECUTIVE ORDER NO. 11126

Ex. Ord. No. 11126, Nov. 1, 1963, 28 F.R. 11717, as amended by Ex. Ord. No. 11221, May 6, 1965, 30 F.R. 6427; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, which related to the Interdepartmental Committee on the Status of Women and the Citizens' Advisory Council on the Status of Women, was revoked by Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, formerly set out below.

EX. ORD. NO. 11246. EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended by Ex. Ord. No. 11375, Oct. 13, 1967, 32 F.R. 14303; Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985; Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501; Ex. Ord. No. 13279, § 4, Dec. 12, 2002, 67 F.R. 77143; Ex. Ord. No. 13665, § 2, Apr. 8, 2014, 79 F.R. 20749; Ex. Ord. No. 13672, § 2, July 21, 2014, 79 F.R. 42971, provided:

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

[Superseded. Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985.]

PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

SUBPART B—CONTRACTORS' AGREEMENTS

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

"[(3)] The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

"(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(5) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(6) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(8) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 [section 204 of this Order] so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or any agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies

or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *provided*, that such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *and provided further*, that in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 [sections 2000d to 2000d–4 of this title and this subchapter] or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964 [this subchapter].

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

SEC. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

SUBPART E—CERTIFICATES OF MERIT

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices, and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor; together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract," as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 [sections 2000d to 2000d–4 of this title] shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof [section 2000d–1 of this title] and the regulations of the administering department or agency issued thereunder.

PART IV—MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Govern-

ment contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

EX. ORD. NO. 11478. EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053; Ex. Ord. No. 13087, May 28, 1998, 63 F.R. 30097; Ex. Ord. No. 13152, May 2, 2000, 65 F.R. 26115; Ex. Ord. No. 13672, §1, July 21, 2014, 79 F.R. 42971, provided:

NOW THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation, gender identity, or status as a parent., [sic] and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government, to the extent permitted by law.

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and and [sic] appropriate to carry out its responsibilities under this Order.

SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

SEC. 6. "Status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

SEC. 7. The Office of Personnel Management shall be authorized to develop guidance on the provisions of this order prohibiting discrimination on the basis of an individual's sexual orientation or status as a parent.

SEC. 8. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office [now Government Accountability Office]) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 9. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

SEC. 10. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970 [Title 39, Postal Service].

SEC. 11. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.

EXECUTIVE ORDER NO. 12050

Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, as amended by Ex. Ord. No. 12057, May 8, 1978, 43 F.R. 19811; Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639; Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which established a National Advisory Committee for Women, was omitted in view of the revocation of sections 1 to 5 and 7 and 8 by Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639 and the revocation of section 6 by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239.

EX. ORD. NO. 12067. COORDINATION OF FEDERAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e-4 of this title and in the Appendix to Title 5, Government Organizations and Employees], it is ordered as follows:

1-1. IMPLEMENTATION OF REORGANIZATION PLAN

1-101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e-4 of this title and in the Appendix to Title 5, Government Organization and Employees] shall be effective on July 1, 1978.

1-2. RESPONSIBILITIES OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1-201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the

efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1–202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1–203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

1–3. SPECIFIC RESPONSIBILITIES

1–301. To implement its responsibilities under Section 1–2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1–302. The Equal Employment Opportunity Commission shall assist the Office of Personnel Management, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1–303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1–304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1–305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1–306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1–307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

1–4. ANNUAL REPORT

1–401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

1–5. GENERAL PROVISIONS

1–501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1–502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.

JIMMY CARTER.

EX. ORD. NO. 12086. CONSOLIDATION OF CONTRACT COMPLIANCE FUNCTIONS FOR EQUAL EMPLOYMENT OPPORTUNITY

Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1–1. TRANSFER OF FUNCTIONS

1–101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order. No. 11246, as amended [set out as a note above], are transferred or reassigned to the Secretary of Labor from the following agencies:

(a) Department of the Treasury.
(b) Department of Defense.
(c) Department of the Interior.
(d) Department of Commerce.
(e) Department of Health and Human Services.
(f) Department of Housing and Urban Development.
(g) Department of Transportation.
(h) Department of Energy.
(i) Environmental Protection Agency.
(j) General Services Administration.
(k) Small Business Administration.

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1–2. CONFORMING AMENDMENTS TO EXECUTIVE ORDER NO. 11246

1–201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

"SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.".

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.".

1–202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1–203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary".

1–204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.".

1–205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.".

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.".

1–206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1–207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".

1–208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, termi-

nated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.".

1–209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute "Secretary of Labor" for "each contracting agency" in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

"(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.".

1–210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

"SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.".

"SEC. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.".

1–211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

"SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.".

1–212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

"(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order,".

1–213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions "Secretary of Labor" shall be substituted for "administering department or agency" in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

"SEC. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.".

"(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.".

"(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.".

1–214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

"SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.".

1–3. GENERAL PROVISIONS

1–301. The transfers or reassignments provided by Section 1–1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1–302. The conforming amendments provided by Section 1–2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1–101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1–301 of this Order.

EXECUTIVE ORDER NO. 12135

Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, which established the President's Advisory Committee for Women, was revoked by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, set out below.

EX. ORD. NO. 12336. TASK FORCE ON LEGAL EQUITY FOR WOMEN

Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, as amended by Ex. Ord. No. 12355, Apr. 1, 1982, 47 F.R. 14479, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

SECTION 1. *Establishment.* (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

(1) Department of State.
(2) Department of The Treasury.
(3) Department of Defense.
(4) Department of Justice.
(5) Department of The Interior.
(6) Department of Agriculture.
(7) Department of Commerce.
(8) Department of Labor.
(9) Department of Health and Human Services.
(10) Department of Housing and Urban Development.
(11) Department of Transportation.
(12) Department of Energy.
(13) Department of Education.

(14) Agency for International Development.
(15) Veterans Administration [now Department of Veterans Affairs].
(16) Office of Management and Budget.
(17) International Communication Agency.
(18) Office of Personnel Management.
(19) Environmental Protection Agency.
(20) ACTION [now Corporation for National and Community Service].
(21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

SEC. 2. *Functions.* (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

SEC. 3. *Administration.* (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

SEC. 4. *General Provisions.* (a) Section 1–101(h) of Executive Order No. 12258, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

RONALD REAGAN.

[The International Communication Agency was redesignated the United States Information Agency, see section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22.]

EX. ORD. NO. 13171. HISPANIC EMPLOYMENT IN THE FEDERAL GOVERNMENT

Ex. Ord. No. 13171, Oct. 12, 2000, 65 F.R. 61251, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the representation of Hispanics in Federal employment, within merit system principles and consistent with the application of appropriate veterans' preference criteria, to achieve a Federal workforce drawn from all segments of society, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the executive branch to recruit qualified individuals from appropriate sources in an effort to achieve a workforce drawn from all segments of society. Pursuant to this policy, this Administration notes that Hispanics remain underrepresented in the Federal workforce: they make up only 6.4 percent of the Federal civilian workforce, roughly half of their total representation in the civilian labor force. This Executive Order, therefore, affirms ongoing policies and recommends additional policies to eliminate the underpresentation [sic] of Hispanics in the Federal workforce.

SEC. 2. *Responsibilities of Executive Departments and Agencies.* The head of each executive department and agency (agency) shall establish and maintain a program for the recruitment and career development of Hispanics in Federal employment. In its program, each agency shall:

(a) provide a plan for recruiting Hispanics that creates a fully diverse workforce for the agency in the 21st century;

(b) assess and eliminate any systemic barriers to the effective recruitment and consideration of Hispanics, including but not limited to:

(1) broadening the area of consideration to include applicants from all appropriate sources;

(2) ensuring that selection factors are appropriate and achieve the broadest consideration of applicants and do not impose barriers to selection based on nonmerit factors; and

(3) considering the appointment of Hispanic Federal executives to rating, selection, performance review, and executive resources panels and boards;

(c) improve outreach efforts to include organizations outside the Federal Government in order to increase the number of Hispanic candidates in the selection pool for the Senior Executive Service;

(d) promote participation of Hispanic employees in management, leadership, and career development programs;

(e) ensure that performance plans for senior executives, managers, and supervisors include specific language related to significant accomplishments on diversity recruitment and career development and that accountability is predicated on those plans;

(f) establish appropriate agency advisory councils that include Hispanic Employment Program Managers;

(g) implement the goals of the Government-wide Hispanic Employment Initiatives issued by the Office of Personnel Management (OPM) in September 1997 (Nine-Point Plan), and the Report to the President's Management Council on Hispanic Employment in the Federal Government of March 1999;

(h) ensure that managers and supervisors receive periodic training in diversity management in order to carry out their responsibilities to maintain a diverse workforce; and

(i) reflect a continuing priority for eliminating Hispanic underrepresentation in the Federal workforce and incorporate actions under this order as strategies for achieving workforce diversity goals in the agency's Government Performance and Results Act (GPRA) Annual Performance Plan.

SEC. 3. *Cooperation.* All efforts taken by heads of agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation among Federal, public, and private sector employers, and appropriate Hispanic organizations whenever such partnerships and cooperation are possible and would promote the Federal employment of qualified individuals. In developing the long-term comprehensive strategies required by section 2 of this order, agencies shall, as appropriate, consult with and seek information and advice from experts in the areas of special targeted recruitment and diversity in employment.

SEC. 4. *Responsibilities of the Office of Personnel Management.* The Office of Personnel Management is required by law and regulations to undertake a Government-wide minority recruitment effort. Pursuant to that on-going effort and in implementation of this order, the Director of OPM shall:

(a) provide Federal human resources management policy guidance to address Hispanic underrepresentation where it occurs;

(b) take the lead in promoting diversity to executive agencies for such actions as deemed appropriate to promote equal employment opportunity;

(c) within 180 days from the date of this order, prescribe such regulations as may be necessary to carry out the purposes of this order;

(d) within 60 days from the date of this order, establish an Interagency Task Force, chaired by the Director and composed of agency officials at the Deputy Secretary level, or the equivalent. This Task Force shall meet semi-annually to:

(1) review best practices in strategic human resources management planning, including alignment with agency GPRA plans;

(2) assess overall executive branch progress in complying with the requirements of this order;

(3) provide advice on ways to increase Hispanic community involvement; and

(4) recommend any further actions, as appropriate, in eliminating the underrepresentation of Hispanics in the Federal workforce where it occurs; and

(e) issue an annual report with findings and recommendations to the President on the progress made by agencies on matters related to this order. The first annual report shall be issued no later than 1 year from the date of this order.

SEC. 5. *Judicial Review.* This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity except as may be identified in existing laws and regulations, by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13506. ESTABLISHING A WHITE HOUSE COUNCIL ON WOMEN AND GIRLS

Ex. Ord. No. 13506, Mar. 11, 2009, 74 F.R. 11271, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

SECTION 1. *Policy.* Over the past generation, our society has made tremendous progress in eradicating barriers to women's success. A record number of women are attending college and graduate school. Women make up a growing share of our workforce, and more women are corporate executives and business owners than ever before, helping boost the U.S. economy and foster U.S. competitiveness around the world. Today, women are serving at the highest levels of all branches of our Government.

Despite this progress, certain inequalities continue to persist. On average, American women continue to earn only about 78 cents for every dollar men make, and women are still significantly underrepresented in the science, engineering, and technology fields. Far too many women lack health insurance, and many are unable to take time off to care for a new baby or an ailing family member. Violence against women and girls remains a global epidemic. The challenge of ensuring equal educational opportunities for women and girls endures. As the current economic crisis has swept across our Nation, women have been seriously affected.

These issues do not concern just women. When jobs do not offer family leave, that affects men who wish to help care for their families. When women earn less than men for the same work, that affects families who have to work harder to make ends meet. When our daughters do not have the same educational and career opportunities as our sons, that affects entire communities, our economy, and our future as a Nation.

The purpose of this order is to establish a coordinated Federal response to issues that particularly impact the lives of women and girls and to ensure that Federal programs and policies address and take into account the distinctive concerns of women and girls, including women of color and those with disabilities.

SEC. 2. *White House Council on Women and Girls.* There is established within the Executive Office of the President a White House Council on Women and Girls (Council).

(a) *Membership of the Council.* The Council shall consist of the following members:

(1) the Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Liaison, who shall serve as Chair of the Council;

(2) the Secretary of State;

(3) the Secretary of the Treasury;

(4) the Secretary of Defense;

(5) the Attorney General;

(6) the Secretary of the Interior;

(7) the Secretary of Agriculture;

(8) the Secretary of Commerce;

(9) the Secretary of Labor;

(10) the Secretary of Health and Human Services;

(11) the Secretary of Housing and Urban Development;

(12) the Secretary of Transportation;

(13) the Secretary of Energy;

(14) the Secretary of Education;

(15) the Secretary of Veterans Affairs;

(16) the Secretary of Homeland Security;

(17) the Representative of the United States of America to the United Nations;

(18) the United States Trade Representative;

(19) the Director of the Office of Management and Budget;

(20) the Administrator of the Environmental Protection Agency;

(21) the Chair of the Council of Economic Advisers;

(22) the Director of the Office of Personnel Management;

(23) the Administrator of the Small Business Administration;

(24) the Assistant to the President and Director of the Domestic Policy Council;

(25) the Assistant to the President for Economic Policy and Director of the National Economic Council; and

(26) the heads of such other executive branch departments, agencies, and offices as the President may, from time to time, designate.

A member of the Council may designate, to perform the Council functions of the member, a senior-level official who is a part of the member's department, agency, or office, and who is a full-time officer or employee of the Federal Government. At the direction of the Chair, the Council may establish subgroups consisting exclusively of Council members or their designees under this section, as appropriate.

(b) *Administration of the Council.* The Department of Commerce shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations. The Chair shall convene regular meetings of the Council, determine its agenda, and direct its work. The Chair shall designate an Executive Director of the Council, who shall coordinate the work of the Council and head any staff assigned to the Council.

SEC. 3. *Mission and Functions of the Council.* The Council shall work across executive departments and agencies to provide a coordinated Federal response to issues that have a distinct impact on the lives of women and girls, including assisting women-owned businesses to compete internationally and working to increase the participation of women in the science, engineering, and technology workforce, and to ensure that Federal programs and policies adequately take those impacts into account. The Council shall be responsible for providing recommendations to the President on the effects of pending legislation and executive branch policy proposals; for suggesting changes to Federal programs or policies to address issues of special importance to women and girls; for reviewing and recommending changes to policies that have a distinct impact on women in the Federal workforce; and for assisting in the development of legislative and policy proposals of special importance to women and girls. The functions of the Council are advisory only.

SEC. 4. *Outreach.* Consistent with the objectives set out in this order, the Council, in accordance with appli-

cable law, in addition to regular meetings, shall conduct outreach with representatives of nonprofit organizations, State and local government agencies, elected officials, and other interested persons that will assist with the Council's development of a detailed set of recommendations.

SEC. 5. *Federal Interagency Plan.* The Council shall, within 150 days of the date of this order, develop and submit to the President a Federal interagency plan with recommendations for interagency action consistent with the goals of this order. The Federal interagency plan shall include an assessment by each member executive department, agency, or office of the status and scope of its efforts to further the progress and advancement of women and girls. Such an assessment shall include a report on the status of any offices or programs that have been created to develop, implement, or monitor targeted initiatives concerning women or girls. The Federal interagency plan shall also include recommendations for issues, programs, or initiatives that should be further evaluated or studied by the Council. The Council shall review and update the Federal interagency plan periodically, as appropriate, and shall present to the President any updated recommendations or findings.

SEC. 6. *General Provisions.* (a) The heads of executive departments and agencies shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council. Each executive department and agency shall bear its own expense for participating in the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13583. ESTABLISHING A COORDINATED GOVERNMENT-WIDE INITIATIVE TO PROMOTE DIVERSITY AND INCLUSION IN THE FEDERAL WORKFORCE

Ex. Ord. No. 13583, Aug. 18, 2011, 76 F.R. 52847, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the Federal workplace as a model of equal opportunity, diversity, and inclusion, it is hereby ordered as follows:

SECTION 1. *Policy.* Our Nation derives strength from the diversity of its population and from its commitment to equal opportunity for all. We are at our best when we draw on the talents of all parts of our society, and our greatest accomplishments are achieved when diverse perspectives are brought to bear to overcome our greatest challenges.

A commitment to equal opportunity, diversity, and inclusion is critical for the Federal Government as an employer. By law, the Federal Government's recruitment policies should "endeavor to achieve a work force from all segments of society." (5 U.S.C. 2301(b)(1)). As the Nation's largest employer, the Federal Government has a special obligation to lead by example. Attaining a diverse, qualified workforce is one of the cornerstones of the merit-based civil service.

Prior Executive Orders, including but not limited to those listed below, have taken a number of steps to address the leadership role and obligations of the Federal Government as an employer. For example, Executive Order 13171 of October 12, 2000 (Hispanic Employment in the Federal Government), directed executive departments and agencies to implement programs for recruitment and career development of Hispanic employees and established a mechanism for identifying best practices in doing so. Executive Order 13518 of November 9, 2009 (Employment of Veterans in the Federal Government), required the establishment of a Veterans Employment Initiative. Executive Order 13548 of July 26, 2010 (Increasing Federal Employment of Individuals with Disabilities), and its related predecessors, Executive Order 13163 of July 26, 2000 (Increasing the Opportunity for Individuals With Disabilities to be Employed in the Federal Government), and Executive Order 13078 of March 13, 1998 (Increasing Employment of Adults With Disabilities), sought to tap the skills of the millions of Americans living with disabilities.

To realize more fully the goal of using the talents of all segments of society, the Federal Government must continue to challenge itself to enhance its ability to recruit, hire, promote, and retain a more diverse workforce. Further, the Federal Government must create a culture that encourages collaboration, flexibility, and fairness to enable individuals to participate to their full potential.

Wherever possible, the Federal Government must also seek to consolidate compliance efforts established through related or overlapping statutory mandates, directions from Executive Orders, and regulatory requirements. By this order, I am directing executive departments and agencies (agencies) to develop and implement a more comprehensive, integrated, and strategic focus on diversity and inclusion as a key component of their human resources strategies. This approach should include a continuing effort to identify and adopt best practices, implemented in an integrated manner, to promote diversity and remove barriers to equal employment opportunity, consistent with merit system principles and applicable law.

SEC. 2. *Government-Wide Diversity and Inclusion Initiative and Strategic Plan.* The Director of the Office of Personnel Management (OPM) and the Deputy Director for Management of the Office of Management and Budget (OMB), in coordination with the President's Management Council (PMC) and the Chair of the Equal Employment Opportunity Commission (EEOC), shall:

(a) establish a coordinated Government-wide initiative to promote diversity and inclusion in the Federal workforce;

(b) within 90 days of the date of this order:

(i) develop and issue a Government-wide Diversity and Inclusion Strategic Plan (Government-wide Plan), to be updated as appropriate and at a minimum every 4 years, focusing on workforce diversity, workplace inclusion, and agency accountability and leadership. The Government-wide Plan shall highlight comprehensive strategies for agencies to identify and remove barriers to equal employment opportunity that may exist in the Federal Government's recruitment, hiring, promotion, retention, professional development, and training policies and practices;

(ii) review applicable directives to agencies related to the development or submission of agency human capital and other workforce plans and reports in connection with recruitment, hiring, promotion, retention, professional development, and training policies and practices, and develop a strategy for consolidating such agency plans and reports where appropriate and permitted by law; and

(iii) provide guidance to agencies concerning formulation of agency-specific Diversity and Inclusion Strategic Plans prepared pursuant to section 3(b) of this order;

(c) identify appropriate practices to improve the effectiveness of each agency's efforts to recruit, hire, promote, retain, develop, and train a diverse and inclusive workforce, consistent with merit system principles and applicable law; and

(d) establish a system for reporting regularly on agencies' progress in implementing their agency-spe-

cific Diversity and Inclusion Strategic Plans and in meeting the objectives of this order.

SEC. 3. *Responsibilities of Executive Departments and Agencies.* All agencies shall implement the Government-wide Plan prepared pursuant to section 2 of this order, and such other related guidance as issued from time to time by the Director of OPM and Deputy Director for Management of OMB. In addition, the head of each executive department and agency referred to under subsections (1) and (2) of section 901(b) of title 31, United States Code, shall:

(a) designate the agency's Chief Human Capital Officer to be responsible for enhancing employment and promotion opportunities within the agency, in collaboration with the agency's Director of Equal Employment Opportunity and Director of Diversity and Inclusion, if any, and consistent with law and merit system principles, including development and implementation of the agency-specific Diversity and Inclusion Strategic Plan;

(b) within 120 days of the issuance of the Government-wide Plan or its update under section 2(b)(i) of this order, develop and submit for review to the Director of OPM and the Deputy Director for Management of OMB an agency-specific Diversity and Inclusion Strategic Plan for recruiting, hiring, training, developing, advancing, promoting, and retaining a diverse workforce consistent with applicable law, the Government-wide Plan, merit system principles, the agency's overall strategic plan, its human capital plan prepared pursuant to Part 250 of title 5 of the Code of Federal Regulations, and other applicable workforce planning strategies and initiatives;

(c) implement the agency-specific Diversity and Inclusion Strategic Plan after incorporating it into the agency's human capital plan; and

(d) provide information as specified in the reporting requirements developed under section 2(d).

SEC. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted to a department or agency or the head thereof, including the authority granted to EEOC by other Executive Orders (including Executive Order 12067) or any agency's authority to establish an independent Diversity and Inclusion Office; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13665. NON-RETALIATION FOR DISCLOSURE OF COMPENSATION INFORMATION

Ex. Ord. No. 13665, Apr. 8, 2014, 79 F.R. 20749, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act [of 1949], 40 U.S.C. 101 *et seq.*, and in order to take further steps to promote economy and efficiency in Federal Government procurement, it is hereby ordered as follows:

SECTION 1. *Policy.* This order is designed to promote economy and efficiency in Federal Government procurement. It is the policy of the executive branch to enforce vigorously the civil rights laws of the United States, including those laws that prohibit discriminatory practices with respect to compensation. Federal contractors that employ such practices are subject to enforcement action, increasing the risk of disruption, delay, and increased expense in Federal contracting. Compensation discrimination also can lead to labor disputes that are burdensome and costly.

When employees are prohibited from inquiring about, disclosing, or discussing their compensation with fellow workers, compensation discrimination is much more difficult to discover and remediate, and more likely to persist. Such prohibitions (either express or tacit) also restrict the amount of information available to participants in the Federal contracting labor pool, which tends to diminish market efficiency and decrease the likelihood that the most qualified and productive workers are hired at the market efficient price. Ensuring that employees of Federal contractors may discuss their compensation without fear of adverse action will enhance the ability of Federal contractors and their employees to detect and remediate unlawful discriminatory practices, which will contribute to a more efficient market in Federal contracting.

SEC. 2. [Amended Ex. Ord. No. 11246, set out above.]

SEC. 3. *Regulations.* Within 160 days of the date of this order, the Secretary of Labor shall propose regulations to implement the requirements of this order.

SEC. 4. *Severability.* If any provision of this order, or the application of such provision or amendment to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstances shall not be affected thereby.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to limit the rights of an employee or applicant for employment provided under any provision of law. It also shall not be construed to prevent a Federal contractor covered by this order from pursuing a defense, as long as the defense is not based on a rule, policy, practice, agreement, or other instrument that prohibits employees or applicants from discussing or disclosing their compensation or the compensation of other employees or applicants, subject to paragraph (3) of section 202 of Executive Order 11246, as added by this order.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 6. *Effective Date.* This order shall become effective immediately, and shall apply to contracts entered into on or after the effective date of rules promulgated by the Department of Labor under section 3 of this order.

BARACK OBAMA.

EX. ORD. NO. 13672. FURTHER AMENDMENTS TO EXECUTIVE ORDER 11478, EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT, AND EXECUTIVE ORDER 11246, EQUAL EMPLOYMENT OPPORTUNITY

Ex. Ord. No. 13672, July 21, 2014, 79 F.R. 42971, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 121, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination and take further steps to promote economy and efficiency in Federal Government procurement by prohibiting discrimination based on sexual orientation and gender identity, it is hereby ordered as follows:

SECTION 1. [Amended Ex. Ord. No. 11478, set out above.]

SEC. 2. [Amended Ex. Ord. No. 11246, set out above.]

SEC. 3. *Regulations.* Within 90 days of the date of this order, the Secretary of Labor shall prepare regulations to implement the requirements of section 2 of this order.

SEC. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 5. *Effective Date.* This order shall become effective immediately, and section 2 of this order shall apply to contracts entered into on or after the effective date of the rules promulgated by the Department of Labor under section 3 of this order.

BARACK OBAMA.

ENHANCED COLLECTION OF RELEVANT DATA AND STATISTICS RELATING TO WOMEN

Memorandum of President of the United States, Mar. 4, 2011, 76 F.R. 12823, provided:

Memorandum for the Heads of Executive Departments and Agencies

I am proud to work with the White House Council on Women and Girls, the Office of Management and Budget, and the Department of Commerce on this week's release of *Women in America*, a report detailing the status of American women in the areas of families and income, health, employment, education, and violence and crime. This report provides a snapshot of the status of American women today, serving as a valuable resource for Government officials, academics, members of nonprofit, nongovernmental, and news organizations, and others.

My Administration is committed to ensuring that Federal programs achieve policy goals in the most cost-effective manner. The *Women in America* report, together with the accompanying website collection of relevant data, will assist Government officials in crafting policies in light of available statistical evidence. It will also assist the work of the nongovernmental sector, including journalists, public policy analysts, and academic researchers, by providing data that allow greater understanding of policies and programs.

Preparation of this report revealed the vast data resources of the Federal statistical agencies. It also revealed some gaps in data collection. Gathering and analyzing additional data to fill in the gaps could help policymakers gather a more accurate and comprehensive view of the status and needs of American women.

Accordingly, I hereby request the heads of executive departments and agencies, where possible within existing collections of data and in light of budgetary constraints, to identify and to seek to fill in gaps in statistics and improve survey methodology relating to women wherever appropriate, including in the broad areas covered by the *Women in America* report: families and income, health, employment, education, and violence and crime.

Examples of some of the efforts that could be undertaken by departments and agencies with respect to the gathering or design of comprehensive data related to women include the following:

(a) Maternal Mortality. I encourage the National Center for Health Statistics (NCHS) to continue to work with States and other registration areas to complete the expeditious adoption of the most current standards for the collection of information on vital events, as well as the transition to electronic reporting systems. Maternal mortality is an important indicator of women's health both internationally and nationally. In the United States, maternal mortality statistics are based upon the information recorded on death certificates and collected by State and local vital records offices. The NCHS compiles the data across the 50 States and other registration areas. Due to concerns about data quality in the ascertainment of maternal mortality statistics, the 2003 revision of the standard death certificate introduced improved standards for collecting data. Until all 50 States and registration areas adopt the new data standards, formulating a national-level maternal mortality ratio remains difficult.

(b) Women in Leadership in Corporate America. Women participate in every sector of the workforce. Their current role in corporate leadership is an important indicator of their progress. I encourage the Chair of the Securities and Exchange Commission to seek to supplement the information it already collects by seeking to collect, among other data, information on the presence of women in governance positions in corporations, in order to shed further light on the role of women in corporate America.

(c) Women in Leadership in Public Service. I encourage the Corporation for National and Community Service to include statistics about the role of women in diverse aspects of public service within its planned work on measuring civic engagement.

This memorandum shall be carried out to the extent permitted by law, consistent with the legal authorities of executive departments and agencies and subject to the availability of appropriations. Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof; or the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 2000e–1. Exemption

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e–2 or 2000e–3 of this title for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e–2 or

XXIII, §2303(b), Oct. 24, 1992, 106 Stat. 2959, 2960, 3093.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), (3), (5)(D), was in the original "this Act", meaning Pub. L. 101–218, Dec. 11, 1989, 103 Stat. 1859, known as the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12001 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486, §1202(d)(5), substituted "and projects" for ", projects, and joint ventures".

Subsec. (b)(1). Pub. L. 102–486, §1202(c)(1), inserted "three-year" before "management plan".

Subsec. (b)(4). Pub. L. 102–486, §2303(b), inserted before period at end "and the plan developed under section 5905 of this title".

Subsec. (b)(5), (6). Pub. L. 102–486, §1202(c)(2), added pars. (5) and (6) and struck out former par. (5) which read as follows: "The plan shall accompany the President's annual budget submission to the Congress."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (a) and (b) of this section are listed as the 20th item on page 84 and the 19th item on page 86), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 12007. No antitrust immunity or defenses

Nothing in this chapter shall be deemed to convey to any person, partnership, corporation, or other entity immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law. As used in this section, "antitrust laws" means those Acts set forth in section 12 of title 15.

(Pub. L. 101–218, §10, Dec. 11, 1989, 103 Stat. 1869.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 101–218, Dec. 11, 1989, 103 Stat. 1859, known as the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12001 of this title and Tables.

CHAPTER 126—EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

§ 12101. Findings and purpose

(a) Findings

The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been pre-

cluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101–336, § 2, July 26, 1990, 104 Stat. 328; Pub. L. 110–325, § 3, Sept. 25, 2008, 122 Stat. 3554.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–325, § 3(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;".

Subsec. (a)(7) to (9). Pub. L. 110–325, § 3(2), (3), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: "individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–325, § 1, Sept. 25, 2008, 122 Stat. 3553, provided that: "This Act [enacting sections 12103 and 12205a of this title, amending this section, sections 12102, 12111 to 12114, 12201, and 12206 to 12213 of this title, section 705 and former section 706 of Title 29, Labor, and enacting provisions set out as notes under this section and section 705 of Title 29] may be cited as the 'ADA Amendments Act of 2008'."

SHORT TITLE

Pub. L. 101–336, § 1(a), July 26, 1990, 104 Stat. 327, provided that: "This Act [enacting this chapter and section 225 of Title 47, Telecommunications, amending section 706 of Title 29, Labor, and sections 152, 221, and 611 of Title 47, and enacting provisions set out as notes under sections 12111, 12131, 12141, 12161, and 12181 of this title] may be cited as the 'Americans with Disabilities Act of 1990'."

FINDINGS AND PURPOSES OF PUB. L. 110–325

Pub. L. 110–325, § 2, Sept. 25, 2008, 122 Stat. 3553, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) in enacting the Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. 12101 et seq.], Congress intended that the Act 'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage;

"(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

"(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition

of a handicapped individual under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], that expectation has not been fulfilled;

"(4) the holdings of the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

"(5) the holding of the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

"(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

"(7) in particular, the Supreme Court, in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the term 'substantially limits' to require a greater degree of limitation than was intended by Congress; and

"(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term 'substantially limits' as 'significantly restricted' are inconsistent with congressional intent, by expressing too high a standard.

"(b) PURPOSES.—The purposes of this Act [see Short Title of 2008 Amendment note above] are—

"(1) to carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection to be available under the ADA;

"(2) to reject the requirement enunciated by the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

"(3) to reject the Supreme Court's reasoning in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

"(4) to reject the standards enunciated by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the terms 'substantially' and 'major' in the definition of disability under the ADA 'need to be interpreted strictly to create a demanding standard for qualifying as disabled,' and that to be substantially limited in performing a major life activity under the ADA 'an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives';

"(5) to convey congressional intent that the standard created by the Supreme Court in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for 'substantially limits', and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

"(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term 'substantially limits' as 'significantly restricted' to be consistent with this Act, including the amendments made by this Act."

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING DISABILITY-RELATED EMPLOYMENT INCENTIVES

Pub. L. 106–170, title III, §303(a), Dec. 17, 1999, 113 Stat. 1903, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other Federal laws, specifically addressing the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities; and that, not later than 3 years after Dec. 17, 1999, the Comptroller General was to transmit to the appropriate congressional committees a written report presenting the results of the study and any appropriate recommendations for legislative or administrative changes.

§ 12102. Definition of disability

As used in this chapter:

(1) Disability

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad

coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

(Pub. L. 101–336, §3, July 26, 1990, 104 Stat. 329; Pub. L. 110–325, §4(a), Sept. 25, 2008, 122 Stat. 3555.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The ADA Amendments Act of 2008, referred to in par. (4)(B), is Pub. L. 110–325, Sept. 25, 2008, 122 Stat. 3553. Section 2 of the Act, relating to the findings and purposes of the Act, is set out as a note under section 12101 of this title. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note under section 12101 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–325 amended section generally. Prior to amendment, section consisted of pars. (1) to (3) defining for purposes of this chapter "auxiliary aids and services", "disability", and "State".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

§ 12103. Additional definitions

As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.".

(Pub. L. 101–336, §4, as added Pub. L. 110–325, §4(b), Sept. 25, 2008, 122 Stat. 3556.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as an Effective Date of 2008 Amendment note under section 705 of Title 29, Labor.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—EMPLOYMENT

§ 12111. Definitions

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e–4 of this title.

(2) Covered entity

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term in-

cludes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual

The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(Pub. L. 101–336, title I, §101, July 26, 1990, 104 Stat. 330; Pub. L. 102–166, title I, §109(a), Nov. 21, 1991, 105 Stat. 1077; Pub. L. 110–325, §5(c)(1), Sept. 25, 2008, 122 Stat. 3557.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in par. (5)(A), is 24 months after July 26, 1990, see section 108 of Pub. L. 101–336, set out as an Effective Date note below.

The Controlled Substances Act, referred to in par. (6)(A), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

This chapter, referred to in par. (10)(B)(i), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

CONSTITUTIONALITY

For constitutionality of section 101 of Pub. L. 101–336, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2008—Par. (8). Pub. L. 110–325 struck out "with a disability" after "individual" in heading and the first two places appearing in text.

1991—Par. (4). Pub. L. 102–166 inserted at end "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102–166, set out as a note under section 2000e of this title.

EFFECTIVE DATE

Pub. L. 101–336, title I, §108, July 26, 1990, 104 Stat. 337, provided that: "This title [enacting this subchapter] shall become effective 24 months after the date of enactment [July 26, 1990]."

§ 12112. Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term "discriminate against a qualified individual on the basis of disability" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control,

of the employer and the corporation.

ees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

(Pub. L. 101–336, title I, §104, July 26, 1990, 104 Stat. 334; Pub. L. 110–325, §5(c)(2), Sept. 25, 2008, 122 Stat. 3557.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

CODIFICATION

In subsec. (c)(3), "chapter 81 of title 41" substituted for "the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–325 substituted "a qualified individual with a disability shall" for "the term 'qualified individual with a disability' shall".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

§ 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e–10 of this title.

(Pub. L. 101–336, title I, §105, July 26, 1990, 104 Stat. 336.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

§ 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

(Pub. L. 101–336, title I, §106, July 26, 1990, 104 Stat. 336.)

§ 12117. Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e–4, 2000e–5, 2000e–6, 2000e–8, and 2000e–9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 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 subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this sub-

chapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

(Pub. L. 101–336, title I, §107, July 26, 1990, 104 Stat. 336.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

SUBCHAPTER II—PUBLIC SERVICES

PART A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

§ 12131. Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4)[1] of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(Pub. L. 101–336, title II, §201, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

Section 24102 of title 49, referred to in par. (1)(C), was subsequently amended, and section 24102(4) no longer defines "commuter authority". However, such term is defined elsewhere in that section.

CODIFICATION

In par. (1)(C), "section 24102(4) of title 49" substituted for "section 103(8) of the Rail Passenger Service Act" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

EFFECTIVE DATE

Pub. L. 101–336, title II, §205, July 26, 1990, 104 Stat. 338, provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle [subtitle A (§§201–205) of title II of Pub. L. 101–336, enacting this part] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

"(b) EXCEPTION.—Section 204 [section 12134 of this title] shall become effective on the date of enactment of this Act."

EX. ORD. NO. 13217. COMMUNITY-BASED ALTERNATIVES FOR INDIVIDUALS WITH DISABILITIES

Ex. Ord. No. 13217, June 18, 2001, 66 F.R. 33155, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to place qualified individuals with disabilities in community settings whenever appropriate, it is hereby ordered as follows:

SECTION 1. *Policy.* This order is issued consistent with the following findings and principles:

(a) The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of Americans.

(b) The United States seeks to ensure that America's community-based programs effectively foster independence and participation in the community for Americans with disabilities.

(c) Unjustified isolation or segregation of qualified individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 [12131] *et seq.* States must avoid disability-based discrimination unless doing so would fundamentally alter the nature of the service, program, or activity provided by the State.

(d) In *Olmstead v. L.C.*, 527 U.S. 581 (1999) (the "*Olmstead* decision"), the Supreme Court construed Title II of the ADA [42 U.S.C. 12131 et seq.] to require States to place qualified individuals with mental disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the State can reasonably accommodate the placement, taking into account the resources available to the State and the needs of others with disabilities.

(e) The Federal Government must assist States and localities to implement swiftly the *Olmstead* decision, so as to help ensure that all Americans have the opportunity to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life.

SEC. 2. *Swift Implementation of the Olmstead Decision: Agency Responsibilities.* (a) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall work cooperatively to ensure that the *Olmstead* decision is implemented in a timely manner. Specifically, the designated agencies should work with States to help them assess their compliance with the *Olmstead* decision and the ADA [42 U.S.C. 12101 et seq.] in providing services to qualified individuals with disabilities in community-based settings, as long as such services are appropriate to the needs of those individuals. These agencies should provide technical guidance and work cooperatively with States to achieve the goals of Title II of the ADA [42 U.S.C. 12131 et seq.], particularly where States have chosen to develop comprehensive, effectively working plans to provide services to qualified individuals with disabilities in the most integrated settings. These agencies should also ensure that existing Federal resources are used in the most effective manner to support the goals of the ADA. The Secretary of Health and Human Services shall take the lead in coordinating these efforts.

(b) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall evaluate the policies, programs, statutes, and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with

[1] See References in Text note below.

disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review should ensure the involvement of consumers, advocacy organizations, providers, and relevant agency representatives. Each agency head should report to the President, through the Secretary of Health and Human Services, with the results of their evaluation within 120 days.

(c) The Attorney General and the Secretary of Health and Human Services shall fully enforce Title II of the ADA, including investigating and resolving complaints filed on behalf of individuals who allege that they have been the victims of unjustified institutionalization. Whenever possible, the Department of Justice and the Department of Health and Human Services should work cooperatively with States to resolve these complaints, and should use alternative dispute resolution to bring these complaints to a quick and constructive resolution.

(d) The agency actions directed by this order shall be done consistent with this Administration's budget.

SEC. 3. *Judicial Review.* Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

(Pub. L. 101–336, title II, § 202, July 26, 1990, 104 Stat. 337.)

§ 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

(Pub. L. 101–336, title II, § 203, July 26, 1990, 104 Stat. 337.)

§ 12134. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

(Pub. L. 101–336, title II, § 204, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective July 26, 1990, see section 205(b) of Pub. L. 101–336, set out as a note under section 12131 of this title.

PART B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

SUBPART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

§ 12141. Definitions

As used in this subpart:

(1) Demand responsive system

The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) Designated public transportation

The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) Fixed route system

The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) Operates

The term "operates", as used with respect to a fixed route system or demand responsive

empted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000–a(e)) [42 U.S.C. 2000a et seq.] or to religious organizations or entities controlled by religious organizations, including places of worship.

(Pub. L. 101–336, title III, § 307, July 26, 1990, 104 Stat. 363.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title II of the Act is classified generally to subchapter II (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

§ 12188. Enforcement

(a) In general

(1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a–3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section[1] 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General

(1) Denial of rights

(A) Duty to investigate

(i) In general

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

(ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation

If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or

(ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages

For purposes of subsection (b)(2)(B) of this section, the term "monetary damages" and

[1] So in original. The word "section" probably should not appear.

"such other relief" does not include punitive damages.

(5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

(Pub. L. 101–336, title III, § 308, July 26, 1990, 104 Stat. 363.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1)(A)(ii), (5), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

CIVIL ACTIONS FOR VIOLATIONS BY PUBLIC ACCOMMODATIONS

For provisions directing that, except for any civil action brought for a violation of section 12183 of this title, no civil action shall be brought for any act or omission described in section 12182 of this title which occurs (1) during the first six months after the effective date of this subchapter, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less, and (2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less, see section 310(b) of Pub. L. 101–336, set out as an Effective Date note under section 12181 of this title.

§ 12189. Examinations and courses

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(Pub. L. 101–336, title III, § 309, July 26, 1990, 104 Stat. 365.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101–336, set out as a note under section 12181 of this title.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 12201. Construction

(a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I, in transportation covered by subchapter II or III, or in places of public accommodation covered by subchapter III.

(c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter[1] I and III.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) Benefits under State worker's compensation laws

Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) Fundamental alteration

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii) of this title, specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

[1] So in original. Probably should be "subchapters".

(ii) When the Department of Justice receives a complaint for which it does not have jurisdiction under section 504 and is not the designated agency, it may exercise jurisdiction pursuant to § 35.190(e) or refer the complaint to an agency that does have jurisdiction under section 504 or to the appropriate agency designated in subpart G of this part or, in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission.

(3)(i) If the agency that receives a complaint has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.

(ii) If the agency that receives a complaint does not have section 504 jurisdiction, but is the designated agency, it shall process the complaint according to the procedures established by this subpart.

(b) *Employment complaints.* (1) If a complaint alleges employment discrimination subject to title I of the Act, and the agency has section 504 jurisdiction, the agency shall follow the procedures issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.

(2) If a complaint alleges employment discrimination subject to title I of the Act, and the designated agency does not have section 504 jurisdiction, the agency shall refer the complaint to the Equal Employment Opportunity Commission for processing under title I of the Act.

(3) Complaints alleging employment discrimination subject to this part, but not to title I of the Act shall be processed in accordance with the procedures established by this subpart.

(c) *Complete complaints.* (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.

(2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

[Order No. 1512–91, 56 FR 35716, July 26, 1991, as amended by AG Order No. 3180–2010, 75 FR 56184, Sept. 15, 2010]

§ 35.172 Investigations and compliance reviews.

(a) The designated agency shall investigate complaints for which it is responsible under § 35.171.

(b) The designated agency may conduct compliance reviews of public entities in order to ascertain whether there has been a failure to comply with the nondiscrimination requirements of this part.

(c) Where appropriate, the designated agency shall attempt informal resolution of any matter being investigated under this section, and, if resolution is not achieved and a violation is found, issue to the public entity and the complainant, if any, a Letter of Findings that shall include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found (including compensatory damages where appropriate); and

(3) Notice of the rights and procedures available under paragraph (d) of this section and §§ 35.173 and 35.174.

(d) At any time, the complainant may file a private suit pursuant to section 203 of the Act, 42 U.S.C. 12133, whether or not the designated agency finds a violation.

[AG Order No. 3180–2010, 75 FR 56184, Sept. 15, 2010]

§ 35.173 Voluntary compliance agreements.

(a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—

(1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and

(2) Initiate negotiations with the public entity to secure compliance by voluntary means.

(b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—

(1) Be in writing and signed by the parties;
(2) Address each cited violation;
(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;
(4) Provide assurance that discrimination will not recur; and
(5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

§§ 35.179–35.189 [Reserved]

Subpart G—Designated Agencies

§ 35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.

(b) The Federal agencies listed in paragraph (b) (1) through (8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.

(1) *Department of Agriculture:* All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) *Department of Education:* All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

(3) *Department of Health and Human Services:* All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs, and preschool and daycare programs.

(1) Be in writing and signed by the parties;
(2) Address each cited violation;
(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;
(4) Provide assurance that discrimination will not recur; and
(5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

§§ 35.179–35.189 [Reserved]

Subpart G—Designated Agencies

§ 35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.

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(1) *Department of Agriculture:* All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) *Department of Education:* All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

(3) *Department of Health and Human Services:* All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs, and preschool and daycare programs.

(4) *Department of Housing and Urban Development:* All programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral.

(5) *Department of Interior:* All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

(6) *Department of Justice:* All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e.g., audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies.

(7) *Department of Labor:* All programs, services, and regulatory activities relating to labor and the work force.

(8) *Department of Transportation:* All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.

(c) Responsibility for the implementation of subpart F of this part for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section may be assigned to other specific agencies by the Department of Justice.

(d) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

(e) When the Department receives a complaint directed to the Attorney General alleging a violation of this part that may fall within the jurisdiction of a designated agency or another Federal agency that may have jurisdiction under section 504, the Department may exercise its discretion to retain the complaint for investigation under this part.

[Order No. 1512–91, 56 FR 35716, July 26, 1991, as amended by AG Order No. 3180–2010, 75 FR 56184, Sept. 15, 2010]

§§ 35.191–35.999 [Reserved]

APPENDIX A TO PART 35—GUIDANCE TO REVISIONS TO ADA REGULATION ON NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

NOTE: This Appendix contains guidance providing a section-by-section analysis of the revisions to 28 CFR part 35 published on September 15, 2010.

SECTION-BY-SECTION ANALYSIS AND RESPONSE TO PUBLIC COMMENTS

This section provides a detailed description of the Department's changes to the title II regulation, the reasoning behind those changes, and responses to public comments received on these topics. The Section-by-Section Analysis follows the order of the title II regulation itself, except that, if the Department has not changed a regulatory section, the unchanged section has not been mentioned.

SUBPART A—GENERAL

Section 35.104 Definitions.

"1991 Standards" and "2004 ADAAG"

The Department has included in the final rule new definitions of both the "1991 Standards" and the "2004 ADAAG." The term "1991 Standards" refers to the ADA Standards for Accessible Design, originally published on July 26, 1991, and republished as Appendix D to part 36. The term "2004 ADAAG" refers to ADA Chapter 1, ADA Chapter 2, and Chapters 3 through 10 of the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, which were issued by the Access Board on July 23, 2004, 36 CFR 1191, app. B and D (2009), and which the Department has adopted in this final rule. These terms are included in the definitions section for ease of reference.

"2010 Standards"

The Department has added to the final rule a definition of the term "2010 Standards." The term "2010 Standards" refers to the 2010 ADA Standards for Accessible Design, which

No GAO

101ST CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 101-485
Part 2

AMERICANS WITH DISABILITIES ACT OF 1990

MAY 15, 1990.—Ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 2273 which on May 9, 1989, was referred jointly to the Committee on Education and Labor, the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

39-081

Section 204(b) of the legislation specifies that not later than one year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that includes standards applicable to facilties and vehicles covered under section 203.

Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

Enforcement

Section 205 of the legislation specifies that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning public services.

It is the Committee's intent that administrative enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.

The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local governments. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, the Federal government would use the enforcement sanctions of section 505 of the Rehabilitation Act of 1973. Because the fund termination procedures of section 505 are inapplicable to State and local government entities that do not receive Federal funds, the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.

The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that persons with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.

Effective date

In accordance with section 206 of the legislation, title II of the bill shall become effective 18 months after the date of enactment except that the provisions of the bill applicable to the purchase of new fixed route vehicles shall become effective on the date of enactment of this Act.

101ST CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 101-485
Part 3

AMERICANS WITH DISABILITIES ACT OF 1990

MAY 15, 1990.—Ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2273 which on May 9, 1989, was referred jointly to the Committee on Education and Labor, the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

29-940

Section 106. Regulations

The Equal Employment Opportunity Commission (EEOC) is required to issue regulations within 1 year after enactment. The regulations must be in an accessible format, and must be promulgated in accordance with the Administrative Procedure Act.[45]

In the employment title, as in all the titles, the Committee expects that the designated agencies will take their responsibilities seriously and will issue the required regulations in the designated time-frame. As noted, one of the stated purposes of this Act is "to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities."[46] The first role that the federal agencies must play in enforcing the ADA is the issuance of regulations. The Committee intends that individuals with disabilities have a right under this Act to require the relevant agencies to issue the mandated regulations.

Section 107. Enforcement

Title I incorporated the powers, remedies and procedures set forth in Sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964.[47] The Committee intends that the powers, remedies and procedures available to persons discriminated against based on disability shall be the same as, and parallel to, the powers, remedies and procedures available to persons discriminated against based on race, color, religion, sex or national origin. Thus, if the powers, remedies and procedures change in title VII of the 1964 Act, they will change identically under the ADA for persons with disabilities.

A bill is currently pending in the Judiciary and Education and Labor Committees, H.R. 4000, which would amend the powers, remedies and procedures of title VII of the Civil Rights Act of 1964. Because of the cross-reference to title VII in Section 107, any amendments to title VII that may be made in H.R. 4000 or in any other bill would be fully applicable to the ADA. An amendment was offered, during consideration of H.R. 2273 by the Committee, that would have removed the cross-reference to title VII and would have substituted the actual words of the cross-referenced sections. This amendment was an attempt to freeze the current title VII remedies (*i.e.*, equitable relief, including injunctions and back pay) in the ADA. This amendment was rejected as antithetical to the purpose of the ADA—to provide civil rights protections for persons with disabilities that are parallel to those available to minorities and women. By retaining the cross-reference to title VII, the Committee's intent is that the remedies of title VII, currently and as amended in the future, will be applicable to persons with disabilities.

The Committee also addressed the concern that the statutory language providing that the remedies and procedures set forth in title VII of the Civil Rights Act of 1964 "shall be available" might have been interpreted to imply that a plaintiff could bypass the administrative remedies of title VII and go directly to court under

[45] 5 U.S.C. 551 *et seq.*
[46] Section 2(b)(3).
[47] 42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8 and 2000e-9.

title I of the ADA.[48] Thus an amendment was adopted that replaced the term "available, with respect" with "the powers, remedies and procedures this title provides." The purpose of this amendment was to clarify that persons with disabilities must follow the same procedures and secure the same remedies as women and minorities under title VII, currently and as amended in the future. The Committee adopted this amendment because it reaffirms the intent of parity between people with disabilities and minorities and women under title VII, and because it serves to clarify the intended meaning of the provision. The amendment does not affect in any way the continued availability of the rights, remedies and procedures of other federal laws and other state laws (including state common law) as provided in Section 501(b) of this Act, but simply clarifies that the remedies of title VII of the Civil Rights Act of 1964 are the only remedies that are provided by title I of this Act for employment discrimination claims.

Administrative complaints filed under this title and the Rehabilitation Act should be dealt with in a manner to avoid duplication of efforts, and to prevent inconsistent or conflicting standards. The Committee intends that agencies with enforcement authority under this title or the Rehabilitation Act of 1973 should develop procedures and coordination mechanisms to achieve these goals. Coordinating mechanisms should be established in regulations or memoranda of understanding.

The term "person" is used in the enforcement section to make it clear that organizations representing individuals with disabilities shall have standing to sue under the ADA.

Section 108. Effective date

Title I becomes effective 24 months after enactment.

TITLE II—PUBLIC SERVICES

Section 201. Definition

This section defines the term "qualified individual with a disability." This definition is derived from the regulations implementing Section 504 of the Rehabilitation Act of 1973,[49] and should be interpreted in a manner consistent with those regulations.

Section 202. Discrimination

Title II extends the protections of Section 504 of the Rehabilitation Act to cover all programs of state or local governments, regardless of the receipt of federal financial assistance. By prohibiting discrimination against persons with disabilities in programs and activities of the federal government and by recipients of federal financial assistance, Section 504 of the Rehabilitation Act has served not only to open up public services and programs to people with disabilities but has also been used to end segregation. The purpose of title II is to continue to break down barriers to the inte-

[48] The concerns expressed was that the term "shall be available" could be read to mean that the powers, remedies and procedures were merely available to a plaintiff, and that a plaintiff could choose not to avail him or her self of such powers, remedies and procedures.
[49] 45 CFR 84.3(k).

Section 203. Actions applicable to public transportation provided by public entities considered discriminatory

This section prohibits discrimination in public transportation provided by public entities. These requirements were extensively addressed by the Committees with jurisdiction over transportation issues.

Section 204. Regulations

The Attorney General is require to issue regulations within 1 year after enactment. The regulations must be consistent with this title and the coordination regulations under the Rehabilitation Act of 1973, except with respect to "program accessibility, existing facilities" and "communications." For these provisions, such regulations must be consistent with the regulations applicable to federally conducted activities under Section 504 of the Rehabilitation Act.

Unlike the other titles in this Act, title II does not list all of the forms of discrimination that the title is intended to prohibit. Thus, the purpose of this section is to direct the Attorney General to issue regulations setting forth the forms of discrimination prohibited.[60] The Committee intends that the regulations under title II incorporate interpretations of the term discrimination set forth in titles I and III of the ADA to the extent that they do not conflict with the Section 504 regulations.

The Secretary of Transportation is required to issue regulations for requirements under Section 203. The regulations must be in an accessible format, and must be promulgated in accordance with the Administrative Procedure Act.

Section 205. Enforcement

Section 205 incorporates the remedies, procedures and rights set forth in Section 505 of the Rehabilitation Act of 1973.[61] As in title I, the Committee adopted an amendment to delete the term "shall be available" in order to clarify that Rehabilitation Act remedies are the only remedies which title II provides for violations of title II. The Rehabilitation Act provides a private right of action, with a full panoply of remedies available, as well as attorney's fees.[62]

This enforcement provision, like the others in the ADA, should be read in conjunction with Section 501(b), which provides that the ADA does not preempt other applicable laws that include equal or greater protection. For title II, like Section 504 of the Rehabilitation Act, this includes remedies available under 42 U.S.C. 1983 and under state law claims.[63]

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[60] The Act requires that regulations promulgated by the Attorney General shall be consistent with the coordination regulations codified at 28 CFR Part 41, as in existence on January 13, 1978. The portion of the 1978 regulation which dealt with design, construction and alteration used the American National Standards Institute (ANSI) specifications: later notices have substituted the Uniform Federal Accessibility Standards (UFAS) for the ANSI reference. The Committee does not intend that the Attorney General use the old ANSI standard from the 1978 regulation.

[61] 29 U.S.C. 794a.

[62] *See, e.g., Miener* v. *State of Missouri*, 673 F. 2d 969 (8th Cir. 1982).

[63] See discussion of Section 501(b), below.

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Calendar No. 216

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THE AMERICANS WITH DISABILITIES ACT OF 1989

AUGUST 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, January 3), 1989

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 933]

The Committee on Labor and Human Resources, to which was referred the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

I. INTRODUCTION

On August 2, 1989, the Committee on Labor and Human Resources, by a vote of 16-0, ordered favorably reported S. 933, the

Regulations

Section 204 of the legislation specifies that not later than one year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28 Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities" and "communications" such regulations shall be consistent with applicable portions of regulations and analysis relating to Federally conducted activities under section 504 of the Rehabilitation Act of 1973 (part 39 of title 28 of the Code of Federal Regulations).

Section 204(b) of the legislation specifies that not later than one year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203.

Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

Enforcement

Section 205 of the legislation specifies that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning public services.

It is the Committee's intent that enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.

The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local government. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, the Federal government would use the enforcement sanctions of section 505 of the Rehabilitation Act of 1973. Because the fund termination procedures of section 505 are inapplicable to State and local government entities that do not receive Federal funds, the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.

The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities. Again, consistent with section 504, it is not our intent that persons with disabilities need to exhaust Federal administrative remedies before exercising the private right of action.

Effective date

In accordance with section 206 of the legislation, title II of the bill shall become effective 18 months after the date of enactment except that the provisions of the bill applicable to the purchase of new fixed route vehicles shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Section 504 of the Rehabilitation Act of 1973 prohibits Federal agencies and recipients of Federal financial assistance from discriminating against persons with disabilities. The purpose of title III of the legislation is to extend these general prohibitions against discrimination to privately operated public accommodations and to bring individuals with disabilities into the economic and social mainstream of American life. Title III fulfills these purposes in a clear, balanced, and reasonable manner.

Title III is not intended to govern any terms or conditions of employment by providers of public accommodations or potential places of employment; employment practices are governed by title I of this legislation.

Title III also prohibits discrimination in public transportation services provided by private entities.

Scope of coverage of public accommodations

Section 301(3) of the legislation sets forth the definition of the term "public accommodation." The following privately operated entities are considered public accommodations for purposes of title III, if the operations of such entities affect commerce:

(1) An inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, or lecture hall;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;