

effective date, will be taken by the Commission after the regulations have been before Congress 30 calendar days in accordance with 29 U.S.C. 794.

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SUPPLEMENTARY INFORMATION:

Preamble

As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 provides in pertinent part that:

No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under . . . any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, 29 U.S.C. 794.

On June 27, 1984, the Commission published a Notice of Proposed Rulemaking seeking comments on proposed regulations to implement and enforce section 504 to prohibit discrimination on the basis of handicap in Commission programs and activities. See 49 FR 26244 (June 27, 1984). These proposed rules were adapted from prototypes prepared by the Department of Justice and were also based on the Justice Department's own notice of proposed rulemaking, 48 FR 5996 (Dec. 16, 1983), and comments filed in response to that notice. The comment period on the Commission's notice ended on July 27, 1984. Seven comments were received in response to the notice. The Commission is now publishing the text of its final rules implementing section 504.

While the comments received were, for the most part, favorable, some general objections to the proposed rules were raised. For example, two organizations, Paralyzed Veterans of America and the State of Washington Governor's Committee on Employment of the Handicapped, objected to the fact that the regulations would not apply to the activities of candidates and conventions that received federal financing under Title 26, United States Code. The Commission's proposed rules

were based on the district court's determination in *Paralyzed Veterans of America v. Civiletti*, No. CV79-1979-WPG (C.D. Cal., Sept. 12, 1980), that the obligations of section 504 do not apply to presidential candidates who receive public funding under Title 26. Although, as the commentors correctly point out, the *Paralyzed Veterans* case is still pending in the district court, the Commission has been dismissed as a party to the lawsuit pursuant to the aforementioned order. Therefore, the Commission has not expanded the fiscal rules to cover the activities of candidates and conventions receiving federal financing. Should the district court's order be reversed, the Commission will reevaluate its section 504 regulations.

Some of the comments also contended that the Commission's rules should be the same as those governing federally assisted programs and activities under 28 CFR Part 41. However, the Commission notes that the obligations of federal agencies and recipients of federal funds are not identical under section 504 due to differences in the nature of their respective interests and operations. These differences require variations in the rules governing each area. The substantive nondiscrimination obligations imposed on the agency under the Commission's rules, however, are essentially the same as those established by federal regulations for programs and activities receiving federal financial assistance. Moreover, in response to comments on the Justice Department's notice, the Commission's regulations conform more closely to the federally assisted regulations than those proposed by other federal agencies. See section 6.130.

29 U.S.C. 794 requires that copies of any proposed regulations under this section be submitted to the appropriate authorizing committees of Congress and may not take effect until thirty calendar days after they have been submitted to these committees. These regulations were transmitted to Congress on August 17, 1984.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) Regulatory Flexibility Act

These rules will not have a significant economic impact on a substantial number of small entities because the proposed regulations would impact only on the Commission's own programs and activities, not those of regulated entities. Therefore, no Regulatory Flexibility Analysis is required.

FEDERAL ELECTION COMMISSION

11 CFR Part 6

(Notice 1984-15)

Enforcement of Nondiscrimination on the Basis of Handicap in Federal Election Commission Programs

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal to Congress.

SUMMARY: The Commission is publishing today regulations to implement and enforce section 504 of the Rehabilitation Act of 1973, as amended, to prohibit discrimination on the basis of handicap in Commission programs and activities.

EFFECTIVE DATES: Further action, including the announcement of an

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Statement of Basis and Purpose

The final rules contain only one textual change from the proposed language published in the June notice. The term "Commission" has been substituted for the term "agency" throughout the text of the regulations. This revision was made so that the terminology used in these rules would be the same as that used in other Commission regulations. A section-by-section analysis of the rules follows.

Section 6.101 Purpose.

Section 6.101 states the purpose of the rules, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 6.102 Application.

The regulations apply to all programs or activities conducted by the Federal Election Commission.

Section 6.103 Definitions.

(a) "Auxiliary aids." "Auxiliary aids" means services, including attendant services, or devices that enable handicapped persons, including those with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 6.160(a)(1), they may also be necessary to meet other requirements of the regulations.

(b) "Commission." For purposes of these regulations, "Commission" means the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463.

(c) "Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (see § 6.170(b)).

(d) "Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," has been deleted because the term "facility", as used in this regulation refers to structures and not to intangible property rights. However, the

regulations make it clear that the term "facility" applies to all programs and activities conducted by the agency regardless of whether the facility is owned, leased, or used on some other basis, such as rental of conference facilities. The term "facility" is used in § 6.150 and § 6.170(e).

(e) "Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

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

Paragraph (1) deviates from existing regulations for federally assisted programs. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs, a qualified handicapped person is one who, with reasonable accommodation, can achieve the purpose of the program. This definition deviates from that contained in the Department of Justice's notice of proposed rulemaking and the prototypes. The definitions proposed in those documents incorporated language from the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). Under the Justice Department's proposed rules, a "qualified handicapped person" would be defined as one "who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature." Numerous comments objecting to the underscored language in the proposed definition were received in response to the notice. These comments pointed out that the proposed rules combined what should be a two-step inquiry into a one-step process that could work to the detriment of handicapped individuals. The Commission believes that the issue of whether a handicapped person is "qualified" should be separate from an inquiry into what type of accommodation or modification, if any, is needed for the person to participate in a particular program. Therefore, the Commission has not included the *Davis* language in its proposed definition of "qualified handicapped person".

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services in the coordination

regulation for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

(g) "Section 504." This definition makes clear that, as used in these regulations, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 6.110 Evaluation.

The agency will conduct an evaluation of its compliance with section 504 within one year of the effective date of these regulations. The process will include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance. (28 CFR 41.5(b)(2)). Experience has demonstrated the evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504. The Commission has not completed its study of whether the Federal Advisory Committee Act, 5 U.S.C. App. I, applies to this consultation requirement. The Commission will make its decision on this issue public at a later date.

The rules contain specific criteria for conducting the agency evaluation. Section 6.110(a) provides that the evaluation will include a determination of whether the agency's policies and practices meet the requirements of section 504 and whether modification of any such policies and practices is required. If modification of any policy or practice is found to be required as a result of this evaluation, the agency is required to proceed to make the necessary modifications. Following the completion of the evaluation, under section 6.110(b), the agency is required to keep on file and make available for public inspection, for at least three years, the following information: (1) A list of interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made.

Section 6.111 Notice.

Section 6.111 requires the agency to disseminate sufficient information to employees, applicants, participants,

beneficiaries, and other interested persons to apprise them of the rights and protections afforded by section 504 and the proposed regulations. Methods of providing this information include, for example, the publication of information in handbooks, manuals and pamphlets that describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 6.130 General prohibitions against discrimination.

Section 6.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 6.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 6.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrefutable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrefutable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit accorded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 6.150-6.151) and communications

(§ 6.160) are specific applications of this principle.

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

Paragraph (b)(1)(v) was added in response to comments on the Department of Justice's notice of proposed rulemaking. It incorporates a provision from the regulations for federally-assisted programs (28 CFR 41.51(b)(1)(v)) to prohibit the agency from aiding or perpetuating discrimination against a qualified handicapped person by providing significant assistance to an agency, organization or person, except candidates or conventions receiving public financing under Title 26, United States Code, that discriminates on the basis of handicap in providing any aid, benefit or service to beneficiaries of the recipient's program.

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

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

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate. Paragraph

(b)(3)(iii) was taken from the regulation governing federally-assisted programs (28 CFR 41.51(b)(3)(iii)) in response to comments on the Justice Department's notice. It prohibits the agency from utilizing criteria or methods of administration that would have the purpose or effect of perpetuating the discrimination of another agency.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 6.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

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

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of a certification. A person is a "qualified handicapped person" with respect to certification, if he or she can meet the essential eligibility requirements for receiving the certification (see § 6.103).

In addition, the agency may not establish requirements for the programs or activities of certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. The agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

This section applies to the Commission's certification of presidential candidates eligible to receive public funding under the Presidential Election Campaign Fund Act, 26 U.S.C. 9001-9013, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031-9042. The rules were included even though there is little opportunity for discriminatory treatment since public financing is granted according to automatic formulas on either a matching basis or a cent-per-vote basis. See S. Rep. No. 689, 93rd Cong., 2d Sess. 9-10 (1974).

Paragraph (b)(6) does not, however, extend section 504 directly to the programs or activities of certified entities themselves (i.e., the presidential candidates). The program or activities of Federal certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal certificate. This is consistent with the district court's determination in

Paralyzed Veterans of America v. Civiletti, No. CV79-1979-WPG (C.D. Ca., Sept. 12, 1980), that the obligations of section 504 do not apply to presidential candidates who receive public funding under the Act. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the certified entity, and thereby indirectly affect limited aspects of their operations.

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

Section 6.140 Employment

Section 6.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a recent decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The Court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt v. United States Postal Service*, 662 F.2d 292 (5th Cir. 1981).

Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in the regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, will be those applicable to employment in federally conducted programs or activities. In addition to this section, § 6.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1979 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 6.149 Program accessibility: Discrimination prohibited.

Section 6.149 states the general nondiscrimination principles underlying the program accessibility requirements of §§ 6.150 and 6.151:

Section 6.150 Program accessibility: Existing facilities.

This section adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance programs (28 CFR 41.56-41.58) with certain modifications. Thus, § 6.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulations also make clear that the agency is not required to make each of its existing facilities accessible (§ 6.150(a)(1)). However, § 6.150, unlike 28 CFR 41.56-41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 6.150(a)(2)).

Paragraph (a)(2) provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 6.160(e). Several comments on the Commission's notice objected to the inclusion of these provisions. The Commission has decided to retain § 6.150(a)(2) and § 6.160(e) in its final rules, however, because it is a fair codification of the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). In *Davis*, the Court found that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial

burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's regulations implementing section 504 to the Supreme Court's interpretation of the statute in *Davis*, as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs or administrative burdens, that the refusal to undertake the accommodations is not discriminatory. Thus, paragraph (a)(2) clarifies the factors the Commission will consider in determining what constitutes a "reasonable accommodation" under these regulations.

Moreover, the Commission notes that this paragraph does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity. Inclusion of this paragraph would also not prevent the Commission from making necessary modifications in stages when to do so all at once would result in extensive financial or administrative burdens.

The Commission expects that compliance with § 6.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity will be considered. Under the rules, the burden of proving that compliance with § 6.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by majority vote of the Commission accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency's decision or failure to make a decision may file a complaint under the compliance procedures established in § 6

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

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of these regulations. Where structural modifications are required, a transition plan will be developed within six months of the effective date of the regulations. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 6.150(d) requires that the agency consult with interested persons, including handicapped persons and organizations representing handicapped persons, in developing a transition plan for structural changes. The Commission has not completed its study of whether the Federal Advisory Committee Act applies to this consultation requirement. If it is necessary to formulate a transition plan, the Commission will make a determination regarding its applicability at that time.

Section 6.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 6.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Because new and altered

buildings subject to this regulation are also subject to the Architectural Barriers Act, the proposed rules would adopt the existing Architectural Barriers Act standard for section 504 compliance. Adoption of this standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of the regulations are not required to meet the new construction standard. They are subject, however, to the requirements of § 6.150.

Section 6.160 Communications.

Section 6.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps will include procedures for determining when auxiliary aids are necessary under § 6.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They will also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice will be given primary consideration by the agency (§ 6.160). The agency will honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 6.160(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see *supra* preamble § 6.150(a)(2)). Unless not required by § 6.160(e), the agency will provide auxiliary aids at no cost to the handicapped person.

As under § 6.150, the Commission need not take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Commission expects that compliance with § 6.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity will be considered. Under the rules, the burden of proving that compliance with § 6.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be

made by majority vote of the Commission accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency's decision or failure to make a decision may file a complaint under the compliance procedures established in § 6.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency will make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency will ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. § 6.160(a)(1)(ii). For example, the agency need not provide wheelchairs, eye glasses, or hearing aids to applicants or participants in its programs.

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

Paragraph (d) requires the agency to take appropriate steps to provide handicapped persons with information that is disseminated under § 6.111 regarding section 504 rights and protections.

Section 6.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints.

Paragraph (b) provides that the agency will process employment complaints according to existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791).

The agency will designate an official, the Rehabilitation Act Officer, who will be responsible for coordinating implementation of this section (§ 6.170(c)).

Under § 6.170(d), any person who believes that he or she or a specific class of persons of which he or she is a member has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The regulations also provide that any person who believes that a denial of his or her services will result or has resulted in discrimination prohibited by section 504 may file a complaint under this part. This provision was included based on comments on the Department of Justice's notice, as well as the facts in *United States v. Baylor Medical Center*, 564 F.Supp. 1495 (N.D. Tex. 1983). In that case, an interpreter was permitted to file a section 504 complaint on his own behalf when he was denied admission to a hospital to provide assistance to a hearing-impaired person undergoing surgery. The agency may extend the time limit when the complainant shows good cause. Good cause could be found if, for example, (1) the complainant could not reasonably be expected to know of the act or event said to be discriminatory; or (2) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days.

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

The agency is required to accept and investigate all complete complaints (§ 6.170(f)(1)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 6.170(f)(3)). If a complaint

is not complete when it is filed, the agency will notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted in noncompliance is found, and notice of the right to appeal. One appeal within the agency will be provided (§ 6.170(h)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance. A provision in the prototype that would have authorized the Assistant Attorney General for Civil Rights to grant the agency an extension of time in which to respond to a complaint or appeal under section 504 was not included in the rules. This proposed oversight role is not statutorily required.

Paragraph (i) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.