

dividuals with disabilities. In furtherance of such efforts, Federal agencies shall:

- (1) Use available hiring authorities, consistent with statutes, regulations, and prior Executive orders and Presidential Memoranda;
  - (2) Expand their outreach efforts, using both traditional and nontraditional methods; and
  - (3) Increase their efforts to accommodate individuals with disabilities.
- (c) As a model employer, the Federal Government will take the lead in educating the public about employment opportunities available for individuals with disabilities.
- (d) This order does not require agencies to create new positions or to change existing qualification standards for any position.

SEC. 2. *Implementation.* Each Federal agency shall prepare a plan to increase the opportunities for individuals with disabilities to be employed in the agency. Each agency shall submit that plan to the Office of Personnel Management within 60 days from the date of this order.

SEC. 3. *Authority to Develop Guidance.* The Office of Personnel Management shall develop guidance on the provisions of this order to increase the opportunities for individuals with disabilities employed in the Federal Government.

SEC. 4. *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, its employees, or any person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13164. REQUIRING FEDERAL AGENCIES TO ESTABLISH PROCEDURES TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION

Ex. Ord. No. 13164, July 26, 2000, 65 F.R. 46565, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended, and in order to promote a model Federal workplace that provides reasonable accommodation for (1) individuals with disabilities in the application process for Federal employment; (2) Federal employees with disabilities to perform the essential functions of a position; and (3) Federal employees with disabilities to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities, it is hereby ordered as follows:

SECTION 1. *Establishment of Effective Written Procedures to Facilitate the Provision of Reasonable Accommodation.* (a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. The written procedures may allow different components of an agency to tailor their procedures as necessary to ensure the expeditious processing of requests.

(b) As set forth in *Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities* (1998), effective written procedures for processing requests for reasonable accommodation should include the following:

- (1) Explain that an employee or job applicant may initiate a request for reasonable accommodation orally or in writing. If the agency requires an applicant or employee to complete a reasonable accommodation request form for recordkeeping purposes, the form must be provided as an attachment to the agency's written procedures;
- (2) Explain how the agency will process a request for reasonable accommodation, and from whom the individual will receive a final decision;
- (3) Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. Time limits for

decision making should be as short as reasonably possible;

(4) Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation where the disability and/or need for accommodation is not obvious;

(5) Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, or the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace;

(6) Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense;

(7) Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position;

(8) Provide that reasonable accommodation denials be in writing and specify the reasons for denial;

(9) Ensure that agencies' systems of recordkeeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulations; and

(10) Encourage the use of informal dispute resolution processes to allow individuals with disabilities to obtain prompt reconsideration of denials of reasonable accommodation. Agencies must also inform individuals with disabilities that they have the right to file complaints in the Equal Employment Opportunity process and other statutory processes, as appropriate, if their requests for reasonable accommodation are denied.

SEC. 2. *Submission of Agency Reasonable Accommodation Procedures to the Equal Employment Opportunity Commission (EEOC).* Within 1 year from the date of this order, each agency shall submit its procedures to the EEOC. Each agency shall also submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted.

SEC. 3. *Collective Bargaining Obligations.* In adopting their reasonable accommodation procedures, agencies must honor their obligations to notify their collective bargaining representatives and bargain over such procedures to the extent required by law.

SEC. 4. *Implementation.* The EEOC shall issue guidance for the implementation of this order within 90 days from the date of this order.

SEC. 5. *Construction and Judicial Review.* (a) Nothing in this order limits the rights that individuals with disabilities may have under the Rehabilitation Act of 1973, as amended.

(b) 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, its employees, or any person.

WILLIAM J. CLINTON.

§ 792. Architectural and Transportation Barriers Compliance Board

(a) **Establishment; membership; chairperson; vice-chairperson; term of office; termination of membership; reappointment; compensation and travel expenses; bylaws; quorum requirements**

(1) There is established within the Federal Government the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the "Access Board") which shall be composed as follows:

(A) Thirteen members shall be appointed by the President from among members of the general public of whom at least a majority shall be individuals with disabilities.

(B) The remaining members shall be the heads of each of the following departments or agencies (or their designees whose positions are executive level IV or higher):

- (i) Department of Health and Human Services.
- (ii) Department of Transportation.
- (iii) Department of Housing and Urban Development.
- (iv) Department of Labor.
- (v) Department of the Interior.
- (vi) Department of Defense.
- (vii) Department of Justice.
- (viii) General Services Administration.
- (ix) Department of Veterans Affairs.
- (x) United States Postal Service.
- (xi) Department of Education.
- (xii) Department of Commerce.

The chairperson and vice-chairperson of the Access Board shall be elected by majority vote of the members of the Access Board to serve for terms of one year. When the chairperson is a member of the general public, the vice-chairperson shall be a Federal official; and when the chairperson is a Federal official, the vice-chairperson shall be a member of the general public. Upon the expiration of the term as chairperson of a member who is a Federal official, the subsequent chairperson shall be a member of the general public; and vice versa.

(2)(A)(i) The term of office of each appointed member of the Access Board shall be 4 years, except as provided in clause (ii). Each year, the terms of office of at least three appointed members of the board<sup>1</sup> shall expire.

(ii)(I) One member appointed for a term beginning December 4, 1992 shall serve for a term of 3 years.

(II) One member appointed for a term beginning December 4, 1993 shall serve for a term of 2 years.

(III) One member appointed for a term beginning December 4, 1994 shall serve for a term of 1 year.

(IV) Members appointed for terms beginning before December 4, 1992 shall serve for terms of 3 years.

(B) A member whose term has expired may continue to serve until a successor has been appointed.

(C) A member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed.

(3) If any appointed member of the Access Board becomes a Federal employee, such member may continue as a member of the Access Board for not longer than the sixty-day period beginning on the date the member becomes a Federal employee.

(4) No individual appointed under paragraph (1)(A) of this subsection who has served as a member of the Access Board may be reappointed to the Access Board more than once unless such individual has not served on the Access Board

for a period of two years prior to the effective date of such individual's appointment.

(5)(A) Members of the Access Board who are not regular full-time employees of the United States shall, while serving on the business of the Access Board, be entitled to receive compensation at rates fixed by the President, but not to exceed the daily equivalent of the rate of pay for level IV of the Executive Schedule under section 5315 of title 5, including travel time, for each day they are engaged in the performance of their duties as members of the Access Board; and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(B) Members of the Access Board who are employed by the Federal Government shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(6)(A) The Access Board shall establish such bylaws and other rules as may be appropriate to enable the Access Board to carry out its functions under this chapter.

(B) The bylaws shall include quorum requirements. The quorum requirements shall provide that (i) a proxy may not be counted for purposes of establishing a quorum, and (ii) not less than half the members required for a quorum shall be members of the general public appointed under paragraph (1)(A).

#### **(b) Functions**

It shall be the function of the Access Board to—

(1) ensure compliance with the standards prescribed pursuant to the Act entitled "An Act to ensure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968 (commonly known as the Architectural Barriers Act of 1968; 42 U.S.C. 4151 et seq.) (including the application of such Act to the United States Postal Service), including enforcing all standards under such Act, and ensuring that all waivers and modifications to the standards are based on findings of fact and are not inconsistent with the provisions of this section;

(2) develop advisory information for, and provide appropriate technical assistance to, individuals or entities with rights or duties under regulations prescribed pursuant to this subchapter or titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq. and 12181 et seq.) with respect to overcoming architectural, transportation, and communication barriers;

(3) establish and maintain—

(A) minimum guidelines and requirements for the standards issued pursuant to the Act commonly known as the Architectural Barriers Act of 1968;

(B) minimum guidelines and requirements for the standards issued pursuant to titles II and III of the Americans with Disabilities Act of 1990;

(C) guidelines for accessibility of telecommunications equipment and customer

<sup>1</sup> So in original. Probably should be "Access Board".

premises equipment under section 255 of title 47; and

(D) standards for accessible electronic and information technology under section 794d of this title;

(4) promote accessibility throughout all segments of society;

(5) investigate and examine alternative approaches to the architectural, transportation, communication, and attitudinal barriers confronting individuals with disabilities, particularly with respect to telecommunications devices, public buildings and monuments, parks and parklands, public transportation (including air, water, and surface transportation, whether interstate, foreign, intrastate, or local), and residential and institutional housing;

(6) determine what measures are being taken by Federal, State, and local governments and by other public or nonprofit agencies to eliminate the barriers described in paragraph (5);

(7) promote the use of the International Accessibility Symbol in all public facilities that are in compliance with the standards prescribed by the Administrator of General Services, the Secretary of Defense, and the Secretary of Housing and Urban Development pursuant to the Act commonly known as the Architectural Barriers Act of 1968;

(8) make to the President and to the Congress reports that shall describe in detail the results of its investigations under paragraphs (5) and (6);

(9) make to the President and to the Congress such recommendations for legislative and administrative changes as the Access Board determines to be necessary or desirable to eliminate the barriers described in paragraph (5);

(10) ensure that public conveyances, including rolling stock, are readily accessible to, and usable by, individuals with physical disabilities; and

(11) carry out the responsibilities specified for the Access Board in section 794d of this title.

**(c) Additional functions; transportation barriers and housing needs; transportation and housing plans and proposals**

The Access Board shall also (1)(A) determine how and to what extent transportation barriers impede the mobility of individuals with disabilities and aged individuals with disabilities and consider ways in which travel expenses in connection with transportation to and from work for individuals with disabilities can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation, and (B) consider the housing needs of individuals with disabilities; (2) determine what measures are being taken, especially by public and other nonprofit agencies and groups having an interest in and a capacity to deal with such problems, (A) to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expanded transportation systems, and (B) to make housing available and accessible to indi-

viduals with disabilities or to meet sheltered housing needs; and (3) prepare plans and proposals for such further actions as may be necessary to the goals of adequate transportation and housing for individuals with disabilities, including proposals for bringing together in a cooperative effort, agencies, organizations, and groups already working toward such goals or whose cooperation is essential to effective and comprehensive action.

**(d) Electronic and information technology accessibility training**

Beginning in fiscal year 2000, the Access Board, after consultation with the Secretary, representatives of such public and private entities as the Access Board determines to be appropriate (including the electronic and information technology industry), targeted individuals and entities (as defined in section 3002 of this title), and State information technology officers, shall provide training for Federal and State employees on any obligations related to section 794d of this title.

**(e) Investigations; hearings; orders; administrative procedure applicable; final orders; judicial review; civil action; intervention**

(1) The Access Board shall conduct investigations, hold public hearings, and issue such orders as it deems necessary to ensure compliance with the provisions of the Acts cited in subsection (b) of this section. Except as provided in paragraph (3) of subsection (f) of this section, the provisions of subchapter II of chapter 5, and chapter 7 of title 5 shall apply to procedures under this subsection, and an order of compliance issued by the Access Board shall be a final order for purposes of judicial review. Any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality. An order of compliance may include the withholding or suspension of Federal funds with respect to any building or public conveyance or rolling stock found not to be in compliance with standards enforced under this section. Pursuant to chapter 7 of title 5, any complainant or participant in a proceeding under this subsection may obtain review of a final order issued in such proceeding.

(2) The executive director is authorized, at the direction of the Access Board—

(A) to bring a civil action in any appropriate United States district court to enforce, in whole or in part, any final order of the Access Board under this subsection; and

(B) to intervene, appear, and participate, or to appear as *amicus curiae*, in any court of the United States or in any court of a State in civil actions that relate to this section or to the Architectural Barriers Act of 1968 [42 U.S.C. 4151 et seq.].

Except as provided in section 518(a) of title 28, relating to litigation before the Supreme Court, the executive director may appear for and represent the Access Board in any civil litigation brought under this section.

**(f) Appointment of executive director, administrative law judges, and other personnel; provisions applicable to administrative law judges; authority and duties of executive director; finality of orders of compliance**

(1) There shall be appointed by the Access Board an executive director and such other professional and clerical personnel as are necessary to carry out its functions under this chapter. The Access Board is authorized to appoint as many administrative law judges as are necessary for proceedings required to be conducted under this section. The provisions applicable to administrative law judges appointed under section 3105 of title 5 shall apply to administrative law judges appointed under this subsection.

(2) The Executive Director shall exercise general supervision over all personnel employed by the Access Board (other than administrative law judges and their assistants). The Executive Director shall have final authority on behalf of the Access Board, with respect to the investigation of alleged noncompliance and in the issuance of formal complaints before the Access Board, and shall have such other duties as the Access Board may prescribe.

(3) For the purpose of this section, an order of compliance issued by an administrative law judge shall be deemed to be an order of the Access Board and shall be the final order for the purpose of judicial review.

**(g) Technical, administrative, or other assistance; appointment, compensation, and travel expenses of advisory and technical experts and consultants**

(1)(A) In carrying out the technical assistance responsibilities of the Access Board under this section, the Board may enter into an inter-agency agreement with another Federal department or agency.

(B) Any funds appropriated to such a department or agency for the purpose of providing technical assistance may be transferred to the Access Board. Any funds appropriated to the Access Board for the purpose of providing such technical assistance may be transferred to such department or agency.

(C) The Access Board may arrange to carry out the technical assistance responsibilities of the Board under this section through such other departments and agencies for such periods as the Board determines to be appropriate.

(D) The Access Board shall establish a procedure to ensure separation of its compliance and technical assistance responsibilities under this section.

(2) The departments or agencies specified in subsection (a) of this section shall make available to the Access Board such technical, administrative, or other assistance as it may require to carry out its functions under this section, and the Access Board may appoint such other advisers, technical experts, and consultants as it deems necessary to assist it in carrying out its functions under this section. Special advisory and technical experts and consultants appointed pursuant to this paragraph shall, while performing their functions under this section, be entitled to receive compensation at rates fixed by

the Chairperson,<sup>2</sup> 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 serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

**(h) Omitted**

**(i) Grants and contracts to aid Access Board in carrying out its functions; acceptance of gifts, devises, and bequests of property**

(1) The Access Board may make grants to, or enter into contracts with, public or private organizations to carry out its duties under subsections (b) and (c) of this section.

(2)(A) The Access Board may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding and facilitating the functions of the Access Board under paragraphs (2) and (4) of subsection (b) of this section. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairperson.<sup>2</sup> Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States.

(B) The Access Board shall publish regulations setting forth the criteria the Board will use in determining whether the acceptance of gifts, devises, and bequests of property, both real and personal, would reflect unfavorably upon the ability of the Board or any employee to carry out the responsibilities or official duties of the Board in a fair and objective manner, or would compromise the integrity of or the appearance of the integrity of a Government program or any official involved in that program.

(3) Omitted.

**(j) Authorization of appropriations**

There are authorized to be appropriated for the purpose of carrying out the duties and functions of the Access Board under this section such sums as may be necessary for each of the fiscal years 1999 through 2003.

(Pub. L. 93-112, title V, §502, Sept. 26, 1973, 87 Stat. 391; Pub. L. 93-516, title I, §§110, 111(n)-(q), Dec. 7, 1974, 88 Stat. 1619, 1621, 1622; Pub. L. 93-651, title I, §§110, 111(n)-(q), Nov. 21, 1974, 89 Stat. 2-4, 2-6, 2-7; Pub. L. 94-230, §§10, 11(b)(13), Mar. 15, 1976, 90 Stat. 212, 214; Pub. L. 95-251, §2(a)(8), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-602, title I, §118, Nov. 6, 1978, 92 Stat. 2979; Pub. L. 96-374, title XIII, §1321, Oct. 3, 1980, 94 Stat. 1499; Pub. L. 98-221, title I, §151, Feb. 22, 1984, 98 Stat. 28; Pub. L. 99-506, title I, §103(d)(2)(C), title VI, §601, title X, §1002(e)(2)(B)-(D), Oct. 21, 1986, 100 Stat. 1810, 1829, 1844; Pub. L. 100-630, title II,

<sup>2</sup> So in original. Probably should not be capitalized.

§ 206(b), Nov. 7, 1988, 102 Stat. 3311; Pub. L. 102-52, § 6, June 6, 1991, 105 Stat. 262; Pub. L. 102-54, § 13(k)(1)(A), June 13, 1991, 105 Stat. 276; Pub. L. 102-569, title I, § 102(p)(30), title V, § 504, Oct. 29, 1992, 106 Stat. 4360, 4424; Pub. L. 103-73, title I, § 112(b), Aug. 11, 1993, 107 Stat. 727; Pub. L. 105-220, title IV, § 408(a)(2), Aug. 7, 1998, 112 Stat. 1202; Pub. L. 105-394, title II, § 203(a), Nov. 13, 1998, 112 Stat. 3653; Pub. L. 108-364, § 3(b)(3), Oct. 25, 2004, 118 Stat. 1737.)

## REFERENCES IN TEXT

Executive level IV, referred to in subsec. (a)(1)(B), is set out in section 5315 of Title 5, Government Organization and Employees.

The Act commonly known as the Architectural Barriers Act of 1968, referred to in subsecs. (b)(1), (3)(A), (7) and (e)(2)(B), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§ 4151 et seq.) 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 4151 of Title 42 and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(2), (3)(B), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended. Titles II and III of the Act are classified generally to subchapters II (§ 12131 et seq.) and III (§ 12181 et seq.), respectively, of chapter 126 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 12101 of Title 42 and Tables.

## CODIFICATION

Subsecs. (h) and (i)(3) of this section, which required the Board to submit an annual report on its activities to Congress and, at the same time the Board transmits the report required under section 4157(b) of Title 42, The Public Health and Welfare, to transmit that report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, items 4 to 6 on page 155 of House Document No. 103-7.

## AMENDMENTS

2004—Subsec. (d). Pub. L. 108-364 substituted “targeted individuals and entities” for “targeted individuals”.

1998—Subsec. (a)(1). Pub. L. 105-220, § 408(a)(2)(A), substituted “chairperson and” for “Chairperson and” in concluding provisions.

Subsec. (b)(2). Pub. L. 105-220, § 408(a)(2)(B)(i), substituted “information” for “guidelines”.

Subsec. (b)(3). Pub. L. 105-220, § 408(a)(2)(B)(ii), added par. (3) and struck out former par. (3) which read as follows: “establish and maintain minimum guidelines and requirements for the standards issued pursuant to the Act commonly known as the Architectural Barriers Act of 1968 and titles II and III of the Americans with Disabilities Act of 1990;”.

Subsec. (b)(11). Pub. L. 105-220, § 408(a)(2)(B)(iii)-(v), added par. (11).

Subsec. (d). Pub. L. 105-394, § 203(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 105-220, § 408(a)(2)(C), substituted “procedures under this subsection” for “procedures under this section”.

Subsec. (e). Pub. L. 105-394, § 203(a)(1), (3), redesignated subsec. (d) as (e) and substituted “subsection (f)” for “subsection (e)” in second sentence of par. (1). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-394, § 203(a)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105-394, § 203(a)(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(2). Pub. L. 105-220, § 408(a)(2)(D), substituted “Committee on Education and the Workforce” for “Committee on Education and Labor”.

Subsec. (h). Pub. L. 105-394, § 203(a)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(2)(A). Pub. L. 105-220, § 408(a)(2)(E), substituted “paragraphs (2) and (4)” for “paragraphs (5) and (7)”.

Subsec. (i). Pub. L. 105-394, § 203(a)(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 105-220, § 408(a)(2)(F), substituted “fiscal years 1999 through 2003” for “fiscal years 1993 through 1997”.

Subsec. (j). Pub. L. 105-394, § 203(a)(1), redesignated subsec. (i) as (j).

1993—Subsec. (a)(5)(A). Pub. L. 103-73 substituted “level IV of the Executive Schedule under section 5315” for “level 4 of the Senior Executive Service Schedule under section 5382”.

1992—Pub. L. 102-569, § 504(a)(2), (3), substituted “the Access Board” and “The Access Board” for “the Board” and “The Board”, respectively, wherever appearing.

Subsec. (a)(1). Pub. L. 102-569, § 504(a)(1), substituted “the ‘Access Board’” for “the ‘Board’” in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 102-569, § 504(b)(1)(A), substituted “Thirteen” for “Twelve” and “at least a majority” for “six”.

Pub. L. 102-569, § 102(p)(30), substituted “individuals with disabilities” for “individuals with handicaps”.

Subsec. (a)(1)(B)(xii). Pub. L. 102-569, § 504(b)(1)(B), added cl. (xii).

Subsec. (a)(2)(A). Pub. L. 102-569, § 504(b)(2), designated existing provisions as cl. (i), substituted “4 years, except as provided in clause (ii)” for “three years” and “at least three” for “four”, and added cl. (ii).

Subsec. (a)(3). Pub. L. 102-569, § 504(b)(3), substituted “a Federal” for “such an” after “member becomes”.

Subsec. (a)(5)(A). Pub. L. 102-569, § 504(b)(4), substituted “the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382” for “the daily rate prescribed for GS-18 under section 5332”.

Subsec. (b). Pub. L. 102-569, § 504(c), amended subsec. (b) generally, substituting present provisions for provisions which outlined eight specific functions of the Access Board.

Subsec. (c). Pub. L. 102-569, § 102(p)(30), substituted “individuals with disabilities” for “individuals with handicaps” wherever appearing.

Subsec. (d)(1). Pub. L. 102-569, § 504(d)(1), in first sentence, substituted “The Access Board shall conduct” for “In carrying out its functions under this chapter, the Access Board shall, directly or through grants to public or private nonprofit organizations or contracts with private nonprofit or forprofit organizations, carry out its functions under subsections (b) and (c) of this section, and shall conduct” and “to ensure compliance” for “to insure compliance”.

Subsec. (d)(3). Pub. L. 102-569, § 504(d)(2), struck out par. (3) which read as follows: “The Access Board, in consultation and coordination with other concerned Federal departments and agencies and agencies within the Department of Education, shall develop standards and provide appropriate technical assistance to any public or private activity, person, or entity affected by regulations prescribed pursuant to this subchapter with respect to overcoming architectural, transportation, and communication barriers. Any funds appropriated to any such department or agency for the purpose of providing such assistance may be transferred to the Access Board for the purpose of carrying out this paragraph. The Access Board may arrange to carry out its responsibilities under this paragraph through such other departments and agencies for such periods as the Access Board determines is appropriate. In carrying out its technical assistance responsibilities under this paragraph, the Access Board shall establish a procedure to insure separation of its compliance and technical assistance responsibilities under this section.”

Subsec. (f). Pub. L. 102-569, §504(e), added par. (1), designated existing provisions as par. (2) and substituted "paragraph" for "subsection", "Chairperson" for "Secretary", and "the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382" for "the daily pay rate for a person employed as a GS-18 under section 5332".

Subsec. (g). Pub. L. 102-569, §504(f), designated existing provisions as par. (1), substituted "paragraphs (8) and (9) of such subsection" for "clauses (5) and (6) of subsection (b) of this section", struck out at end "The Access Board shall prepare two final reports of its activities under subsection (c) of this section. One such report shall be on its activities in the field of transportation barriers facing individuals with disabilities, and the other such report shall be on its activities in the field of the housing needs of individuals with disabilities. The Access Board shall, not later than September 30, 1975, submit each such report, together with its recommendations, to the President and the Congress. The Access Board shall also prepare for such submission an interim report of its activities in each such field within 18 months after September 26, 1973. The Access Board shall prepare and submit two additional reports of its activities under subsection (c) of this section, one report on its activities in the field of transportation barriers facing individuals with disabilities and the other report on its activities in the field of the housing needs of individuals with disabilities. The two additional reports required by the previous sentence shall be submitted not later than February 1, 1988.", and added par. (2).

Pub. L. 102-569, §102(p)(30), substituted "individuals with disabilities" for "individuals with handicaps" wherever appearing.

Subsec. (h)(1). Pub. L. 102-569, §504(g)(1)-(3), redesignated par. (2) as (1), struck out at end "The Access Board may also make grants to any designated State unit for the purpose of conducting studies to provide the cost assessments required by paragraph (1). Before including in such report the findings of any study conducted for the Access Board under a grant or contract to provide the Access Board with such cost assessments, the Access Board shall take all necessary steps to validate the accuracy of any such findings.", and struck out former par. (1) which read as follows: "Within one year following November 6, 1978, the Access Board shall submit to the President and the Congress a report containing an assessment of the amounts required to be expended by States and by political subdivisions thereof to provide individuals with disabilities with full access to all programs and activities receiving Federal assistance."

Pub. L. 102-569, §102(p)(30), substituted "individuals with disabilities" for "individuals with handicaps" before "with full access".

Subsec. (h)(2). Pub. L. 102-569, §504(g)(4), which directed the addition of par. (2) "at the end" of subsec. (h), was executed by adding par. (2) before par. (3) to reflect the probable intent of Congress. Former par. (2) redesignated (1).

Subsec. (i). Pub. L. 102-569, §504(h), substituted "fiscal years 1993 through 1997." for "fiscal years 1987 through 1992, but in no event shall the amount appropriated for any one fiscal year exceed \$3,000,000."

1991—Subsec. (a)(1)(B)(ix). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration".

Subsec. (i). Pub. L. 102-52 substituted "1987 through 1992" for "1987, 1988, 1989, 1990, and 1991".

1988—Subsec. (a)(2). Pub. L. 100-630, §206(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term of office of each appointed member of the Board shall be three years; except that (i) the members first taking office shall serve, as designated by the President at the time of appointment, four for a term of one year, four for a term of two years, and three for a term of three years, (ii) a member whose term has expired may continue to serve until a successor has been appointed, and (iii) a member appointed to

fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed."

Subsec. (a)(3). Pub. L. 100-630, §206(b)(2), substituted "the member" for "he".

Subsec. (a)(5)(A). Pub. L. 100-630, §206(b)(3), substituted "travel time" for "traveltime".

Subsec. (b). Pub. L. 100-630, §206(b)(4)-(7), inserted a comma after "surface transportation" in cl. (2), and substituted "Administrator of General Services" for "Administrator of the General Services Administration" in cl. (4), "results of" for "results to" in cl. (5), and "individuals with physical handicaps" for "physically handicapped persons" in cl. (8).

Subsec. (c)(2)(A). Pub. L. 100-630, §206(b)(8), inserted a comma after "expanded transportation systems".

Subsec. (d)(2)(B). Pub. L. 100-630, §206(b)(9), substituted "that relate to" for "which related to".

Subsec. (f). Pub. L. 100-630, §206(b)(10), substituted "daily pay rate for" for "daily pay rate, for", "section 5332 of title 5" for "section 5332 of title 45", and "travel time" for "traveltime".

Subsec. (g). Pub. L. 100-630, §206(b)(11), substituted "transportation barriers facing individuals with handicaps" for "transportation barriers to individuals with handicaps" and for "transportation barriers of handicapped individuals" in fourth and seventh sentences, respectively, and "housing needs of individuals with handicaps" for "housing needs of handicapped individuals" in seventh sentence.

1986—Subsec. (a)(1)(A). Pub. L. 99-506, §§103(d)(2)(C), 601(a)(2), substituted "Twelve" for "Eleven", "six" for "five", and "individuals with handicaps" for "handicapped individuals".

Subsec. (a)(1)(B). Pub. L. 99-506, §601(a)(1), substituted provision that Chairperson and vice-chairperson of Board shall be elected by majority vote of members of Board to serve for terms of one year, for provision that President had to appoint first Chairman of such Board who was to serve for term of not more than two years, with subsequent Chairmen to be elected by majority vote of Board for term of one year, and inserted provisions that positions of Chairperson and vice-chairperson each be held alternately in succession by Federal official and by member of general public, and that when either office is held by member of general public, the other will be held by Federal official.

Subsec. (a)(2)(ii), (iii). Pub. L. 99-506, §601(a)(3), added cls. (ii) and (iii), and struck out former cl. (ii) which read as follows: "any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed".

Subsec. (a)(6). Pub. L. 99-506, §601(a)(4), added par. (6).

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

Subsec. (d)(2)(A). Pub. L. 99-506, §1002(e)(2)(B), substituted "any final order" for "any, final order".

Subsec. (d)(3). Pub. L. 99-506, §1002(e)(2)(C), substituted "Department of Education" for "Department of Health, Education, and Welfare" and "with respect to overcoming" for "with respect overcoming to".

Subsec. (e)(2). Pub. L. 99-506, §1002(e)(2)(D), substituted "alleged noncompliance and in" for "alleged noncompliance in".

Subsec. (g). Pub. L. 99-506, §601(b), inserted provisions requiring the Board to submit, not later than Feb. 1, 1988, two additional reports on its activities under subsec. (c), one report to deal with its activities relating to transportation barriers to handicapped individuals, the other to deal with activities relating to the housing needs of handicapped individuals.

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

Subsec. (h)(1). Pub. L. 99-506, §103(d)(2)(C), substituted reference to individuals with handicaps for reference to handicapped individuals.

Subsec. (i). Pub. L. 99-506, §601(c), which directed the substitution of "of the fiscal years 1987, 1988, 1989, 1990, and 1991," for "fiscal year ending before October 1,

1986," was executed by making the substitution for "fiscal year ending before October 1, 1986," as the probable intent of Congress. See 1984 Amendment note below.

1984—Subsec. (i). Pub. L. 98-221 substituted "October 1, 1986." for "October 1, 1982".

1980—Subsec. (a)(1)(B)(i). Pub. L. 96-374, §1321(a)(1), substituted "Department of Health and Human Services" for "Department of Health, Education, and Welfare".

Subsec. (a)(1)(B)(xi). Pub. L. 96-374, §1321(a)(2), added cl. (xi).

Subsec. (h)(3). Pub. L. 96-374, §1321(b), added par. (3).

1978—Subsec. (a). Pub. L. 95-602, §118(a), substituted provision permitting President to appoint eleven members of Board from general public of whom five are to be handicapped, adding head of the Department of Justice as a Board member, authorizing President to appoint the first chairman, and providing for the term of office, reappointment, and compensation of Board members for provision restricting Board membership to head of Department of Health, Education, and Welfare, Department of Transportation, Department of Housing and Urban Development, Department of Labor, Department of the Interior, Department of Defense, General Services Administration, United States Postal Service, and Veterans' Administration, appointing Secretary of Health, Education, and Welfare as chairman, and authorizing appointment of a Consumer Advisory Panel, a majority of members of which were to be handicapped, to provide guidance, advice, and recommendations to Board.

Subsec. (b)(1). Pub. L. 95-602, §118(b)(1), substituted provision requiring Board to insure compliance with standards of Architectural Barriers Act of 1968, including application to United States Postal Service, and to insure all waivers and modifications of standards are based on findings of fact and are not inconsistent with that Act or this section for provision requiring Board to insure compliance with the standards prescribed by General Services Administration, Department of Defense, and Department of Housing and Urban Development pursuant to Architectural Barriers Act of 1968.

Subsec. (b)(2). Pub. L. 95-602, §118(b)(2), inserted "communication," before "and attitudinal" and "telecommunication devices," before "public buildings".

Subsec. (b)(7), (8). Pub. L. 95-602, §118(b)(3), added pars. (7) and (8).

Subsec. (d). Pub. L. 95-602, §118(c), designated existing provision as par. (1), substituted "public or private nonprofit organizations or contracts with private nonprofit or forprofit organizations" for "or contracts with public or private nonprofit organizations", "Except as provided in paragraph (3) of subsection (e) of this section, provisions" for "The provisions", "building or public conveyance or rolling stock found" for "building found", and "enforced under this section" for "prescribed pursuant to the Acts cited in subsection (b) of this section", inserted provision permitting a complainant or participant in a proceeding under this subsection to obtain review of a final order pursuant to chapter 7 of title 5, and added pars. (2) and (3).

Subsec. (e). Pub. L. 95-602, §118(d), designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners" wherever appearing. Such substitution was made in pars. (2) and (3) as the probable intent of Congress in view of the amendment to subsec. (e) by section 2(a)(8) of Pub. L. 95-251 (although prior in time to the amendment by Pub. L. 95-602) requiring such substitution wherever appearing in text.

Subsec. (h). Pub. L. 95-602, §118(e), added subsec. (h). Former subsec. (h), which authorized appropriations for carrying out duties and functions of the Board of \$1,000,000 for each of fiscal years ending June 30, 1974, and June 30, 1975, \$1,500,000 for fiscal year ending June 30, 1976, and \$1,500,000 for each of fiscal years ending Sept. 30, 1977 and Sept. 30, 1978, was struck out.

Subsec. (i). Pub. L. 95-602, §118(e), added subsec. (i).

1976—Subsec. (h). Pub. L. 94-230, §10, authorized appropriation of \$1,500,000 for fiscal year ending Sept. 30, 1977.

Pub. L. 94-230, §11(b)(13), authorized appropriation of \$1,500,000 for fiscal year ending Sept. 30, 1978.

1974—Subsec. (a). Pub. L. 93-516, §111(n), redesignated cls. (6), (7), and (8), as cls. (7), (8), and (9), added cl. (6), and following designated clauses, inserted provisions that Secretary of Health, Education, and Welfare shall be Chairman of Board, and that Board shall appoint, upon recommendation of Secretary, a Consumer Advisory Panel, a majority of members of which shall be handicapped individuals, to provide guidance, advice, and recommendations to Board in carrying out its functions.

Pub. L. 93-651, §111(n), amended subsec. (a) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (d). Pub. L. 93-516, §111(o), substituted "this chapter, the Board shall, directly or through grants to or contracts with public or private nonprofit organizations, carrying out its functions under subsections (b) and (c) of this section, and shall conduct" for "this section, the Board shall conduct", and inserted provisions that any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality, and that an order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with standards prescribed pursuant to the Acts referred to in subsec. (b) of this section.

Pub. L. 93-651, 111(o), amended subsec. (d) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (e). Pub. L. 93-516, §111(p), inserted provisions relating to appointment of an executive director and other professional and clerical personnel.

Pub. L. 93-651, §111(p), amended subsec. (e) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (g). Pub. L. 93-516, §111(q), substituted "not later than September 30, 1975" for "prior to January 1, 1975".

Pub. L. 93-651, §111(q), amended subsec. (g) in exactly the same manner as it was amended by Pub. L. 93-516.

Subsec. (h). Pub. L. 93-516, §110, authorized appropriation of \$1,500,000 for fiscal year ending June 30, 1976.

Pub. L. 93-651, §110, amended subsec. (h) in exactly the same manner as it was amended by Pub. L. 93-516.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96-374, set out as a note under section 1001 of Title 20, Education.

#### EXTENSION OF VOCATIONAL REHABILITATION PROGRAMS THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1978; EFFECTIVE DATE OF 1976 AMENDMENT

For contingency provisions relating to the extensions of program authorizations and to the effective date of such extensions, see section 11(a), (b)(1), and (c) of Pub. L. 94-230, set out as a note under section 720 of this title.

#### TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

### § 793. Employment under Federal contracts

#### (a) Amount of contracts or subcontracts; provision for employment and advancement of qualified individuals with disabilities; regulations

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

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

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

#### (c) Waiver by President; national interest special circumstances for waiver of particular agreements; waiver by Secretary of Labor of affirmative action requirements

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

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

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

#### (d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleg-

ing nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

#### (e) Avoidance of duplicative efforts and inconsistencies

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

(Pub. L. 93–112, title V, §503, Sept. 26, 1973, 87 Stat. 393; Pub. L. 95–602, title I, §122(d)(1), Nov. 6, 1978, 92 Stat. 2987; Pub. L. 99–506, title I, §103(d)(2)(B), (C), title X, §§1001(f)(2), (3), 1002(e)(3), Oct. 21, 1986, 100 Stat. 1810, 1843, 1844; Pub. L. 100–630, title II, §206(c), Nov. 7, 1988, 102 Stat. 3312; Pub. L. 102–569, title I, §102(p)(31), title V, §505, Oct. 29, 1992, 106 Stat. 4360, 4427.)

#### REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsecs. (d) and (e), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. Title I of the Act is classified generally to subchapter I (§12111 et seq.) of chapter 126 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102–569, §§102(p)(31)(A), 505(a), substituted “\$10,000” for “\$2,500” in two places, struck out “, in employing persons to carry out such contract,” after “contain a provision requiring that”, and substituted “individuals with disabilities” for “individuals with handicaps as defined in section 706(8) of this title”.

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

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

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

1988—Subsec. (a). Pub. L. 100–630, §206(c)(1), inserted a comma after “to carry out such contract”.

Subsec. (b). Pub. L. 100–630, §206(c)(2), substituted “refused” for “refuses”.

Subsec. (c). Pub. L. 100–630, §206(c)(3), substituted “which the President” for “which The President” and “when the President” for “when The President”.

1986—Subsec. (a). Pub. L. 99–506, §§103(d)(2)(C), 1002(e)(3), substituted “individuals with handicaps” for “handicapped individuals” and “section 706(8) of this title” for “section 706(7) of this title”.

Subsec. (b). Pub. L. 99–506, §§103(d)(2)(B), (C), 1001(f)(2), substituted “individual with handicaps” for “handicapped individual”, “individuals with handicaps” for “handicapped individuals”, and “a contract” for “his contract”.

Subsec. (c). Pub. L. 99–506, §1001(f)(3), substituted “The President” for “he” in two places and substituted “the reasons” for “his reasons”.

1978—Subsec. (a). Pub. L. 95–602 substituted “section 706(7) of this title” for “section 706(6) of this title”.