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PART 100—STANDARDS OF CONDUCT

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Subpart A—General Standards

§ 100.735-1 Purpose and scope.

(a) The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by regular employees and special Government employees is essential to assure the proper performance of Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of regular employees and special Government employees through informed judgment is indispensable to the maintenance of these standards.

(b) This part is intended to foster the foregoing concepts. It is issued in compliance with the requirements of Executive Order No. 11222 of May 8, 1965, and is based upon the provisions of that order, the regulations of the Civil Service Commission issued thereunder (part 735 of 5 CFR Ch. I), and the statutes cited elsewhere in this part.

(c) This part, among other things reflects prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes contained in this part are designed for informational purposes only and in no way constitute an interpretation or construction thereof that is binding upon the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive Orders, regulations or otherwise upon Federal employees and former Federal employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement and any such restriction or requirement, as the case may be, continues to be applicable to employees and former employees in accordance with its own terms. Furthermore, attorneys employed by an agency are subject to the canons of professional ethics of the American Bar Association.

§ 100.735-2 Definitions.

In this subpart:

(a) *Agency* means the following agencies in the Executive Office of the

President: The White House Office, the Council of Economic Advisers, the National Security Council, the National Aeronautics and Space Council, the Office of Science and Technology, and the Office of the Special Representative for Trade Negotiations, and any committee, board, commission, or similar group established in the Executive Office of the President.

(b) *Agency head* means the President for the White House Office, the Chairman of the Council of Economic Advisers for the Council of Economic Advisers, the Executive Secretary of the National Security Council for the National Security Council, the Executive Secretary of the National Aeronautics and Space Council for the National Aeronautics and Space Council, the Director of the Office of Science and Technology for the Office of Science and Technology, and the Special Representative for Trade Negotiations for the Office of the Special Representative for Trade Negotiations, and the Chairman or comparable member of any committee, board, commission, or similar group established by the President.

(c) *Employee* or *regular employee* means an officer or employee of an agency but does not include a special Government employee.

(d) *Special Government employee* means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties, either on a full-time or intermittent basis.

(e) The term *person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 100.735-3 Special Government employees.

Except where specifically provided otherwise, or where limited in terms or by the context to regular employees, all provisions of this subpart relating to employees are applicable also to special Government employees.

§ 100.735-4 General standards of conduct.

(a) All employees shall conduct themselves on the job in such a manner that the work of their agency is efficiently accomplished and courtesy, consideration, and promptness are observed in dealings with the Congress, the public, and other governmental agencies.

(b) All employees shall conduct themselves off the job in such a manner as not to reflect adversely upon their agency or the Federal service.

(c) In all circumstances employees shall conduct themselves so as to exemplify the highest standards of integrity. An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 100.735-5 Responsibilities of employees.

(a) The Executive Clerk for the White House Office and the Counselor for each other agency shall distribute copies of this subpart to each employee and special Government employee within 30 days after the effective date thereof. In the case of a new employee or special Government employee entering on duty after the date of such distribution, a copy shall be furnished at the time of his entrance on duty. All employees and special Government employees shall familiarize themselves with the contents of this subpart.

(b) Copies of Executive Order 11222, regulations, and statutes referred to in § 100.735-1, together with various explanatory materials are available for inspection in the Office of the Executive Clerk for the White House Office and the Counselor for each other agency at any time during regular business

hours. Employees are encouraged to consult these basic materials in any case of doubt as to the proper application or interpretation of the provisions of this subpart.

(c) Attention of all employees is directed to House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service", which is attached to this subpart as Appendix A.

§ 100.735-6 Interpretation and advisory service; counseling.

(a) The agency head shall appoint a Counselor for the agency who shall serve also as the agency's designee to the Civil Service Commission on matters covered by this part. Communications between the Counselor and employee shall be confidential, except as otherwise determined by the agency head.

(b) The Counselor for the agency shall notify all employees and special Government employees of the availability of counseling services, and of how and where such services are available. Such notification shall be made within 90 days after the effective date of this subpart and periodically thereafter. In the case of a new employee or special Government employee appointed after the date of such notification, notification shall be given at the time of his entrance on duty.

§ 100.735-7 Disciplinary action.

(a) A violation of any provision of this subpart by an employee may be cause for appropriate disciplinary action which may be in addition to any penalties prescribed by law. (As to remedial action in cases where an employee's financial interests result in a conflict or apparent conflict of interest, see § 100.735-26.)

(b) Any disciplinary or remedial action taken pursuant to this subpart shall be effected in accordance with any applicable laws, Executive orders, and regulations.

§ 100.735-8 Conflicts of interest.

(a) A conflict of interest may exist whenever an employee has a substantial personal or private interest in a matter which involves his duties and responsibilities as an employee. The

maintenance of public confidence in Government clearly demands that an employee take no action which would constitute the use of his official position to advance his personal or private interest. It is equally important that each employee avoid becoming involved in situations which present the possibility, or even the appearance, that his official position might be used to his private advantage.

(b) Neither the pertinent statutes nor the standards of conduct prescribed in this subpart are to be regarded as entirely comprehensive. Each employee must, in each instance involving a personal or private interest in a matter which also involves his duties and responsibilities as an employee, make certain that his actions do not have the effect or the appearance of the use of his official position for the furtherance of his own interests or those of his family or his business associates.

(c) The principal statutory provisions relating to bribery, graft, and conflicts of interest are contained in Chapter 11 of the Criminal Code, 18 U.S.C. 201-224. Severe penalties are provided for violations, including variously fine, imprisonment, dismissal from office, and disqualification from holding any office of honor, trust, or profit under the United States.

§ 100.735-9 Disqualification because of private financial interests.

(a) Unless authorized to do so as provided hereafter in this section, no employee shall participate personally and substantially as a Government employee in a particular matter in which to his knowledge he has a financial interest (18 U.S.C. 208).

(1) For the purposes of this section—

(i) An employee participates personally and substantially in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise;

(ii) A particular matter is a judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter; and

(iii) A financial interest is the interest of the employee himself or his

spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment.

(b) An employee who has a financial interest (other than a financial interest exempted under paragraph (c) of this section) in a particular matter which is within the scope of his official duties shall make a full disclosure of that interest to the Counselor for the agency in writing. He shall not participate in such matter unless and until he receives a written determination by the agency head pursuant to section 208 of Title 18, United States Code, that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him. If the agency head does not make such a determination he shall direct such remedial action as may be appropriate under the provisions of § 100.735-26.

(c) The financial interests described in this paragraph are hereby exempted pursuant to the provisions of section 208 of Title 18, United States Code, from the restrictions of paragraph (a) of this section and of section 208 of Title 18 as being too remote or inconsequential to affect the integrity of an employee's services in a matter.

(1) Stocks, bonds, policies, properties, or interests in a mutual fund, investment company, trust, bank, or insurance company, as to which the employee has no managerial control or directorship. In the case of a mutual fund or investment company, this exemption applies only where the assets of the fund or company are diversified; it does not apply where the fund or company advertises that it specializes in a particular industry or commodity.

(2) Interest in an investment club: *Provided*, That the fair value of the interest involved does not exceed \$5,000, and that the interest does not exceed one-fourth of the total assets of the investment club.

§ 100.735-10 Additional prohibitions—regular employees.

(a) In addition to the disqualification described in § 100.735-9, a regular em-

ployee is subject to the following major prohibitions.

(1) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

(2) He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he participated personally and substantially. See subparagraph (2) of this paragraph.)

(4) He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209). (See § 100.735-13.)

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances. For the method of obtaining such exemptions or exceptions, see paragraph (d) of § 100.735-12.

§ 100.735-11 Additional prohibitions—special Government employees.

(a) In addition to the disqualification described in § 100.735-9, a special Government employee is subject to the following major prohibitions.

(1) He may not, except in the discharge of his official duties—

(i) Represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205), or

(ii) Represent anyone else in a matter pending before his agency unless he served there no more than 60 days during the previous 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

(2) He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he participated personally and substantially. See subparagraph (2) of this paragraph.)

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances; for the method of obtaining such exemptions or exceptions, see paragraph (d) of § 100.735-12.

§ 100.735-12 Exemptions and exceptions from prohibitions of conflict of interest statutes.

(a) Nothing in this subpart shall be deemed to prohibit an employee, if it is not otherwise inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person in a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

(b) Nothing in this subpart shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee,

through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, as defined in section 202(b) of Title 18 of the United States Code, provided that the agency head approves.

(c) Nothing in this subpart shall be deemed to prohibit an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(d) In addition to the exemptions and exceptions described in this section and in § 100.735-9, the conflict of interest statutes permit certain exemptions and exceptions in specific circumstances. The procedure for effecting such exemptions or exceptions is as follows:

(1) Any regular employee or special Government employee who desires approval or certification of his activities as provided for by section 205 of Title 18, United States Code, shall make application therefor in writing to the Counselor for the agency.

(2) A former employee, including a former special Government employee, who desires certification with regard to his activities under section 207 of Title 18, United States Code, shall make application therefor in writing to the Counselor for the agency.

(3) The Counselor for the agency shall report promptly to the agency head all matters reported to him under this subpart which require consideration of approvals, certifications, or determinations provided for in sections 205, 207, or 208 of Title 18, United States Code.

§ 100.735-13 Salary of employee payable only by United States.

(a) No employee, other than a special Government employee or an employee serving without compensation, shall receive any salary, or any contribution to or supplementation of salary, as compensation for his services as an employee, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality (18 U.S.C. 209).

(b) Nothing in this subpart shall be deemed to prohibit an employee from

continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer nor from accepting contributions, awards, or other expenses under Chapter 41 of Title 5, United States Code (the former Government Employees Training Act).

§ 100.735-14 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;

(2) Conducts operations or activities which are regulated by his agency; or

(3) Has interests which may be substantially affected by the performance or nonperformance of his official duty.

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, loan or other thing of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the family or personal relationships involved are the motivating factors;

(2) Accept food or refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour whom an employee may properly be in attendance;

(3) Accept loans from banks or other financial institutions on customary terms to finance proper or usual activities of employees, such as home mortgage loans; and

(4) Accept unsolicited advertising or promotional materials such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value.

(c) An employee shall not solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than

himself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness or retirement.

(d) The Constitution (Art. 1, sec. 9, par. 8) prohibits acceptance from foreign governments, except with the consent of Congress, of any emolument, office, or title. The Congress has provided for the receipt and disposition of foreign gifts and decorations in 5 U.S.C. 7342. See also Executive Order 11320, 31 FR 15789, and the regulations pursuant thereto in 22 CFR part 3 (as added, 32 FR 6569). Any such gift or thing which cannot appropriately be refused shall be submitted to the Counselor for transmittal to the State Department.

§ 100.735-15 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) Within the limitations imposed by this section, employees are encouraged to engage in teaching, lecturing, and writing. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for the use of non-public information on the basis that the use is in the

public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of Executive Order No. 11222 of May 8, 1965, shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(c) An employee shall not engage in outside employment under a State or local government, except in accordance with applicable regulations of the Civil Service Commission (part 734 of 5 CFR Ch. I).

(d) Neither this section nor § 100.735-14 precludes an employee from:

(1) Receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this subpart and for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

(2) Participation in the activities of national or State political parties not proscribed by law. (See paragraph (o) of § 100.735-22 regarding proscribed political activities.)

(3) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, non-profit educational or recreational, public service, or civic organization.

(e) An employee who intends to engage in outside employment shall obtain the approval, through his official superior, of his agency head. A record of each approval under this paragraph shall be filed in the employee's official personnel folder.

(f) This section does not apply to special Government employees, who are subject to the provisions of § 100.735-23.

§ 100.735-16 Financial interests.

(a) An employee may not have financial interests which—

(1) Establish a substantial personal or private interest in a matter which involves his duties and responsibilities as an employee (an employee may not have financial interests, except as permitted by § 100.735-9(c) or authorized pursuant to § 100.735-12(d); or

(2) Are entered into in reliance upon, or as a result of, information obtained through his employment; or

(3) Result from active and continuous trading (as distinguished from the making of bona fide investments) which is conducted on such a scale as to interfere with the proper performance of his duties.

(b) Aside from the restrictions prescribed or cited in this subpart, employees are free to engage in lawful financial transactions to the same extent as private citizens. Employees should be aware that the financial interests of their wives of minor children and blood relatives who are full-time residents of their households may be regarded, for the purposes of this section, as financial interests of the employees themselves.

(c) This section does not apply to special Government employees, who are subject to the provisions of § 100.735-23.

§ 100.735-17 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him.

§ 100.735-18 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in paragraph (b) of § 100.735-15, directly or indirectly use, or allow the use of, official information obtained through or in connection with

his Government employment which has not been made available to the general public.

§ 100.735–19 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a *just financial obligation* means one acknowledged by the employee, or reduced to judgment by a court, and *in a proper and timely manner* means in a manner which his agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

§ 100.735–20 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 100.735–21 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 100.735–22 Miscellaneous statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of his agency and of the Government. In particular, attention of employees is directed to the following statutory provisions:

(a) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (see §§ 100.735–9, 100.735–10, and 100.735–11).

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (5 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibition against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 100.735-23 Conduct and responsibilities of special Government employees.

(a) A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person whether by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purposes of this section, *inside information* means information obtained under Government authority which has not become part of the body of public information.

(c) A special Government employee who engages in teaching, lecturing, or writing, whether for or without compensation, shall not for such purposes make use of information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for the use of nonpublic information on the basis that such use is in the public interest.

(d) A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(e) Except as provided in paragraph (f) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with his agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(f) Notwithstanding paragraph (e) of this section a special Government employee shall be allowed the same lati-

tude as is authorized for regular Government employees by paragraph (b) of § 100.735-14.

(g) Attention of special Government employees is directed to the provisions of § 100.735-3, making the provisions of this subpart generally applicable to their activities.

§ 100.735-24 Reporting of employment and financial interests—regular employees.

(a) Not later than 90 days after the effective date of this subpart, an employee designated in paragraph (d) of this section shall submit to his agency head a statement, on a form made available in the office of the Executive Clerk for the White House Office and the Counselor for each other agency, setting forth the following information:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, non-profit organizations, and educational or other institutions with or in which he, his spouse, minor child or other member of his immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser or consultant; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) Any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

However, an employee need not report any financial interest exempted under § 100.735-9(c) as too remote or inconsequential to affect the integrity of an employee's services in a matter.

(2) A list of the names of his creditors and the creditors of his spouse, minor child or other member of his immediate household, other than those creditors to whom they may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom they may be indebted for current and ordinary household and living expenses such as

those incurred for household furnishings, an automobile, education, vacations, or the like.

(3) A list of his interests and those of his spouse, minor child or other member of his immediate household in real property or rights in lands, other than property which he occupies as a personal residence.

(b) For the purpose of this section *member of his immediate household* means a full-time resident of the employee's household who is related to him by blood.

(c) Each employee designated in paragraph (d) of this section who enters on duty after the effective date of this subpart shall submit such statement not later than 30 days after the date of his entrance on duty, but not earlier than 90 days after the effective date of this subpart.

(d) Statements of employment and financial interests are required of the following:

(1) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code, except a Presidential appointee required to file a statement of financial interests under section 401 of Executive Order No. 11222 of May 8, 1965.

(2) Employees in classified positions of grade GS-13 or above, or the equivalent thereof.

(e) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of 18 U.S.C. 208 or this subpart.

(f) If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf.

(g) Paragraph (a) of this section does not require an employee to submit any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(h) Each agency shall hold each statement of employment and financial interests in confidence. Each person designated to review a statement of employment and financial interests under section 100.735-26 is responsible for maintaining the statement in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this subpart. An agency may not disclose information from a statement except as the Civil Service Commission or the agency head may determine for good cause shown.

(i) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(j) An employee who believes that his position has been improperly included as one requiring the submission of a statement of employment and financial interests is entitled to obtain a review of his complaint under his agency's grievance procedure.

(k) This section does not apply to special Government employees, who are subject to the provisions of § 100.735-25.

§ 100.735-25 Reporting of employment and financial interests—special Government employees.

(a) A special Government employee shall submit to the agency head a statement of employment and financial interests which reports (1) all current Federal Government employment, (2) the names of all corporations, companies, firms, State of local governmental organizations, research organizations, and educational or other institutions in or for which he is an employee, officer, member, owner, trustee, director, adviser, or consultant, with or without compensation, (3) those financial interests which the agency determines are relevant in the light of the duties he is to perform, and (4) the names of all partnerships in which he is engaged.

(b) A statement required under this section shall be submitted at the time of employment and shall be kept current throughout the term of a special Government employee's service with an agency. A supplementary statement shall be submitted at the time of any reappointment; a negative report will suffice if no changes have occurred since the submission of the last statement.

§ 100.735-26 Reviewing statements of financial interests.

(a) A designee of the agency head shall review the statements required by §§ 100.735-24 and §§ 100.735-25 to determine whether there exists a conflict, or appearance of conflict, between the interests of the employee or special Government employee concerned and the performance of his service for the Government. If the designee determines that such a conflict or appearance of conflict exists, he shall provide the employee with an opportunity to explain the conflict or appearance of conflict. If he concludes that remedial action should be taken, he shall refer the statement to the agency head through the Counselor for the agency designated pursuant to § 100.735-6, with his recommendation for such action. The agency head, after consideration of the employee's explanation and such investigation as he deems appropriate shall direct appropriate remedial action if he deems it necessary.

(b) Remedial action pursuant to paragraph (a) of this section may include, but is not limited to:

- (1) Changes in assigned duties.
- (2) Divestment by the employee of his conflicting interest.
- (3) Disqualification for a particular action.
- (4) Exemption pursuant to paragraph (b) of § 100.735-9 or paragraph (d) of § 100.735-12.
- (5) Disciplinary action.

§ 100.735-27 Supplemental regulations or instructions.

An agency head may issue supplemental and implementing regulations or instructions not inconsistent with this subpart as necessary to carry out the full purpose and intent of Executive Order 11222 and this subpart as may be required by the particular circumstances of his agency. Such regulations or instructions may include but are not limited to, delegations of any authority allowed by law pertaining to the functions placed upon the agency head by this subpart. Such regulations or instructions must be made available to employees and special Government employees in the same manner as this subpart (see § 100.735-5).

Subpart B—Special Procedures; Counsel to the President

§ 100.735-31 Members of part-time committees, boards, and commissions.

(a) This section applies to each part-time member of a committee, board, or commission appointed by the President (referred to in this section as a Member).

(b) When the Counsel to the President determines that the functions and responsibilities of a committee, board, or commission are such that consistent with the policy and purpose of Executive Order 11222 the Members thereof should submit statements of employment and financial interests, he shall request each Member thereof to submit such a statement to the Chairman of the Civil Service Commission.

(c) A statement of employment and financial interests required under this section shall be submitted not later than 30 days after the Member's receipt

of the request therefor from the Counsel to the President, and shall be kept up to date by submission of amended statements of any changes in, or additions to, the information required to be included in the original statement, on a quarterly basis. The statement shall be submitted in the format prescribed by the Chairman of the Civil Service Commission.

(d) The Chairman of the Civil Service Commission shall review each statement of employment and financial interests and any amendment thereto submitted under this section and shall report to the Counsel to the President any information contained in a statement which may indicate a conflict between the financial interests of the Member concerned and the performance of his services for the Government.

§ 100.735-32 Special delegation of authority to the Counsel to the President.

The authority of the President under sections 205 and 208(b) of Title 18, United States Code, to permit certain actions by an officer or employee of the Government, including a special Government employee, for appointment to whose position the President is responsible, reserved to the President by section 505(c) of Executive Order 11222, is delegated to the Counsel to the President.

PART 101—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

Sec.

- 101.1 Executive Office of the President.
- 101.2 Office of Management and Budget.
- 101.3 Office of Administration.
- 101.4 National Security Council.
- 101.5 Council on Environmental Quality.
- 101.6 Office of National Drug Control Policy.
- 101.7 Office of Science and Technology Policy.
- 101.8 Office of the United States Trade Representative.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 40 FR 8061, Feb. 25, 1975 and 55 FR 46067, November 1, 1990, unless otherwise noted.

§ 101.1 Executive Office of the President.

Until further regulations are promulgated, the remainder of the entities within the Executive Office of the President, to the extent that 5 U.S.C. 552 is applicable, shall follow the procedures set forth in the regulations applicable to the Office of Management and Budget (5 CFR Ch. III). Requests for information from these other entities should be submitted directly to such entity.

§ 101.2 Office of Management and Budget.

Freedom of Information regulations for the Office of Management and Budget appear at 5 CFR Ch. III.

§ 101.3 Office of Administration.

Freedom of Information regulations for the Office of Administration appear at 5 CFR part 2502.

[55 FR 46037, Nov. 1, 1990]

§ 101.4 National Security Council.

Freedom of Information regulations for the National Security Council appear at 32 CFR Ch. XXI.

§ 101.5 Council on Environmental Quality.

Freedom of Information regulations for the Council on Environmental Quality appear at 40 CFR Ch. V.

[42 FR 65131, Dec. 30, 1977]

§ 101.6 Office of National Drug Control Policy.

Freedom of Information regulations for the Office of National Drug Control Policy appear at 21 CFR parts 1400-1499.

[55 FR 46037, Nov. 1, 1990]

§ 101.7 Office of Science and Technology Policy.

Freedom of Information regulations for the Office of Science and Technology Policy appear at 32 CFR part 2402.

[55 FR 46037, Nov. 1, 1990]

§ 101.8 Office of the United States Trade Representative.

Freedom of Information regulations for the Office of the United States

Trade Representative appear at 15 CFR part 2004.

[55 FR 46037, Nov. 1, 1990]

PART 102—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EXECUTIVE OFFICE OF THE PRESIDENT

Sec.

- 102.101 Purpose.
- 102.102 Application.
- 102.103 Definitions.
- 102.104–102.109 [Reserved]
- 102.110 Self-evaluation.
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- 102.112–102.129 [Reserved]
- 102.130 General prohibitions against discrimination.
- 102.131–102.139 [Reserved]
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- 102.141–102.148 [Reserved]
- 102.149 Program accessibility: Discrimination prohibited.
- 102.150 Program accessibility: Existing facilities.
- 102.151 Program accessibility: New construction and alterations.
- 102.152–102.159 [Reserved]
- 102.160 Communications.
- 102.161–102.169 [Reserved]
- 102.170 Compliance procedures.
- 102.171–102.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25879, July 8, 1988, unless otherwise noted.

§ 102.101 Purpose.

The purpose of this regulation 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.

§ 102.102 Application.

This regulation (§§ 102.101–102.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 102.103 Definitions.

For purposes of this regulation, the term—

Agency means, for purposes of this regulation only, the following entities in the Executive Office of the President: the White House Office, the Office of the Vice President, the Office of Management and Budget, the Office of Policy Development, the National Security Council, the Office of Science and Technology Policy, the Office of the United States Trade Representative, the Council on Environmental Quality, the Council of Economic Advisers, the Office of Administration, the Office of Federal Procurement Policy, and any committee, board, commission, or similar group established in the Executive Office of the President.

Agency head or head of the agency, as used in §§ 102.150(a)(3), 102.160(d) and 102.170 (i) and (j), shall be a three-member board which will include the Director, Office of Administration, the head of the Executive Office of the President, agency in which the issue needing resolution or decision arises and one other agency head selected by the two other board members. In the event that an issue needing resolution or decision arises within the Office of Administration, one of the board members shall be the Director of the Office of Management and Budget.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

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

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

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

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

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

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

ness, and drug addiction and alcoholism.

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

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

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

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

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

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

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

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

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) “Qualified handicapped person” as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 102.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 102.104—102.109 [Reserved]

§ 102.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

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

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 102.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the

provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 102.112—102.129 [Reserved]

§ 102.130 General prohibitions against discrimination.

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

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

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

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

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

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

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

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

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

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

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

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

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

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

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

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

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

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Execu-

tive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

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

§§ 102.131—102.139 [Reserved]

§ 102.140 Employment.

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

§ 102.141—102.148 [Reserved]

§ 102.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 102.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 102.150 Program accessibility: Existing facilities.

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

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant

historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 102.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the

agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 102.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 102.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

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

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

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

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

§ 102.151 Program accessibility: New construction and alterations.

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

§§ 102.152—102.159 [Reserved]

§ 102.160 Communications.

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

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

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

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

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

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence

and location of accessible services, activities, and facilities.

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

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 102.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 102.161—102.169 [Reserved]

§ 102.170 Compliance procedures.

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

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity

Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Facilities Management, Office of Administration, Executive Office of the President, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director at the following address: Room 486, Old Executive Office Building, 17th and Pennsylvania Ave. NW., Washington, DC 20500.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

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

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the

complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

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

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §102.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 102.171—102.999 [Reserved]

Title 3 Finding Aids

Table 1—Proclamations

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