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participant will be considered in making the loan. A loan for the purchase of a primary residence will not be made for the purpose of paying off an existing mortgage or otherwise providing financing for an existing primary residence purchased more than 2 years earlier.

(b) A primary residence must be used by the participant as his or her principal residence. A primary residence does not include a second home or vacation home. A participant cannot have more than one primary residence. A primary residence may include a houseboat, a house trailer, a condominium, or stock held in a cooperative housing corporation.

(c) Purchase of a primary residence means acquisition of the residence through the exchange of cash or other property or through the total construction of the new residence. Construction of an addition to or the renovation of a residence does not constitute ''purchase'' of a primary residence.

(d) Related purchase costs are any costs that are incurred directly as a result of the purchase or construction of a residence and which can be added to the basis of the residence for Federal tax purposes. However, ''points'' or loan origination fees charged for a loan, whether or not treated as part of the basis, will not be considered a purchase cost.

(e) The documentation required for a loan under this section is as follows:

(1) For all purchases except for construction, a copy of a home purchase contract or a settlement sheet or estimated settlement sheet;

(2) For construction, a home construction contract. If a single home construction contract is unavailable, additional contracts, building permits, receipts, assessments, or other documentation that demonstrates the construction of an entire primary residence and expenses in the amount of the loan may be accepted.

(f) The documentation provided under this subparagraph must bear a date that is no more than 24 months preceding the date of application.

PART 1690—MISCELLANEOUS REGULATIONS

Sec.
1690.1 Plan year.
1690.2 Power of attorney.

AUTHORITY: 5 U.S.C. 8474.

§ 1690.1 Plan year.

The Thrift Savings Plan's plan year will be established on a calendar-year basis for all purposes, except where another applicable provision of law requires that a fiscal year or other basis be used. As used in this section, the term ''calendar-year basis'' means a twelve month period beginning on January 1 and ending on December 31 of the same year.

[52 FR 43315, Nov. 12, 1987]

§ 1690.2 Power of attorney.

This section applies to all regulations in this chapter that require a signature by the participant on a Thrift Savings Plan (TSP) form, where the participant desires to effect transactions through an agent (*i.e.*, an attorney-in-fact). Before an attorney-in-fact may sign a TSP form on behalf of a participant, the Board must have approved either a general power of attorney which authorizes the attorney-in-fact to act on behalf of the participant with respect to the principal's personal property or in Federal Government retirement, financial, or business transactions; or a special power of attorney which authorizes the attorney-in-fact to effect transactions in the TSP on behalf of the participant. For a power of attorney to be acceptable to effect transactions in the TSP, it must be authenticated, attested, acknowledged, or certified before a notary public or other official authorized by law to administer oaths or affirmations. The Board will advise the person submitting a power of attorney whether it is valid to effect transactions in the TSP.

[64 FR 31062, June 9, 1999]

CHAPTER VII—ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

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PART 1700—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; 5 CFR 735.101, *et seq.*

SOURCE: 33 FR 4615, Mar. 16, 1968, unless otherwise noted.

§ 1700.735–101 Adoption of regulations.

Pursuant to § 735.104(f) of this title, the Advisory Commission on Intergovernmental Relations (referred to hereinafter as the Commission) hereby adopts the following sections of part 735 of this title, Code of Federal Regulations: §§ 735.101, 735.102, 735.201a, 735.202(a), (d), (e), (f)–735.210, 735.302, 735.303(a), 735.304, 735.305(a), 735.403(a), 735.404–735.411, 735.412 (b) and (d). These adopted sections are modified and supplemented as set forth in this part.

§ 1700.735–102 Review of statements of employment and financial interests.

Each statement of employment and financial interests submitted under this part shall be reviewed by the Executive Director. When this review indicates a conflict of interest of an employee or special Government employee of the Commission and the performance of his services for the Government, the Executive Director shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the Executive Director shall forward a written report on the indicated conflict to the Chairman, Advisory Commission on Intergovernmental Relations.

§ 1700.735–103 Disciplinary and other remedial action.

An employee or special Government employee of the Commission who violates any of the regulations in this part or adopted under § 1700.735–101 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to, or in lieu of, disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee of his conflicting interests; or

(c) Disqualification for a particular assignment.

§ 1700.735–104 Gifts, entertainment, and favors.

The Commission authorizes the exceptions to § 735.202(a) of this title set forth in § 735.202(b) (1) through (4) of this title.

§ 1700.735–105 Outside employment.

(a) An employee of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment. An employee who engages in outside employment shall report that fact in writing to his supervisor.

(b) Employees and special Government employees of the Commission may engage in teaching, writing, and lecturing, provided, however, employees and special Government employees shall not receive compensation or anything of monetary value for any consultation, discussion, writing, lecturing, or appearance the subject matter of which is devoted substantially to the specific responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not been published or otherwise publicly released by the Commission. The foregoing limitation on the receipt of compensation or anything of monetary value shall not be construed as applying to amounts received for reimbursement for travel and other expenses incurred in performing the outside employment.

§ 1700.735–108 Specific provisions of Commission regulations governing special Government employees.

(a) The term ''special Government employee'' as used in this part means an officer or employee who is retained, designated, appointed, or employed by the Commission to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(b) Special Government employees shall adhere to the standards of conduct applicable to employees set forth in this part and adopted under § 1700.735–101, except that § 735.203(b) of this title is not applicable to a special Government employee.

(c) Pursuant to § 735.305(b) of this title, the Commission authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by § 1700.735–104.

§ 1700.735–109 Statements of employment and financial interests.

(a) In addition to the employees required to submit statements of employment and financial interests under § 735.403(a) of this title, employees in the following named positions shall submit statements of employment and financial interest to the Executive Director:

Assistant Director, Taxation and Finance.

Assistant Director, Governmental Structure and Functions.

Assistant Director, Program Implementation.

(b) The statement of employment and financial interest required by this section shall be submitted by the Executive Director to the Chairman of the Commission.

(c) An employee who believes that his position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the agency's grievance procedure.

(d) A statement of employment and financial interest is not required under this part from Members of the Commission. Members of the Commission are subject to 3 CFR 100.735–31 and are required to file a statement only if requested to do so by the Counsel to the President.

NOTE: Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, 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 section 208 of title 18, United States Code or the regulations in this part or adopted under § 735.101.

PART 1701—ORGANIZATION AND PURPOSE

Sec.

1701.1 Establishment and locations.
1701.2 Name.
1701.3 Purpose.
1701.4 Membership of the Commission.
1701.5 Bipartisan nature of Commission.
1701.6 Organization of Commission, vacancies, quorum.
1701.7 Commission personnel.
1701.8 Activities of the Commission.
1701.9 Step-by-step development of Commission recommendations.
1701.10 Other activities of the Commission.

AUTHORITY: Pub. L. 86–380 of Sept. 24, 1959, 73 Stat 703 (42 U.S.C. 4271).

SOURCE: 51 FR 24800, July 9, 1986, unless otherwise noted.

§ 1701.1 Establishment and locations.

The Advisory Commission on Intergovernmental Relations was established as a permanent independent and bipartisan agency of the Federal Government by Pub. L. 86–380; 73 Stat 703 (43 U.S.C. 4272), enacted in 1959. The Commission's offices are located at 1111 20th Street, NW., Washington, DC 20575.

§ 1701.2 Name.

The formal name of the agency is ''Advisory Commission on Intergovernmental Relations.'' It is also known, and sometimes referred to, as the ''Commission,'' or simply ''ACIR.''

§ 1701.3 Purpose.

The underlying purpose of the Commission is to strengthen the ability of the United States federal system of government to meet the problems of an

increasingly complex society by promoting greater cooperation, understanding and coordination of activities between the separate levels of government. More specifically the purpose of the Commission includes the objectives of:

(a) Bringing together representatives of the Federal, State, and local governments for the consideration of common problem;

(b) Providing a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;

(c) Giving critical attention to the conditions and controls involved in the administration of Federal grant programs;

(d) Making available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the Federal system;

(e) Encouraging discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;

(f) Recommending within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues amount the several levels of government; and

(g) Recommending methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers.

§ 1701.4 Membership of the Commission.

The Commission is composed of twenty-six members, as follows:

(a) Six appointed by the President of the United States, three of whom are officers of the executive branch of the Government, and three private citizens, all of whom have had experience of familiarity with relations between the levels of government;

(b) Three appointed by the President of the Senate, who are Members of the Senate;

(c) Three appointed by the Speaker of the House of Representatives, who are Members of the House;

(d) Four appointed by the President from a panel of at least eight Governors submitted by the Governors' Conference;

(e) Three appointed by the President from panel of at least six members of State legislative bodies submitted by the board of managers of the Council of State Governments;

(f) Four appointed by the President from a panel of at least eight mayors submitted jointly by the American Municipal Association and the United States Conference of Mayors;

(g) Three appointed by the President from a panel of at least six elected county officers submitted by the National Association of County Officials.

§ 1701.5 Bipartisan nature of Commission.

The members appointed from private life under paragraph (a) of § 1701.4 are appointed without regard to political affiliation; of each class of members enumerated in paragraphs (b) and (c) of § 1701.4, two are from the majority party of the respective houses; of each class of members enumerated in paragraphs (d), (e), (f) and (g) of § 1701.4, not more than two may be from any one political party; of each class of members enumerated in paragraphs (e), (f) and (g) of § 1701.4, not more than one from any one State; at least two of the appointees under paragraph (f) are from cities under five hundred thousand population. The term of office of each member of the Commission is two years, but members are eligible for reappointment.

§ 1701.6 Organization of Commission, vacancies, quorum.

(a) The President designates a Chairman and a Vice Chairman from among members of the Commission.

(b) Any vacancy in the membership of the Commission is filled in the same manner in which the original appointment was made; except that where the number of vacancies is fewer than the number of members specified in paragraphs (d), (e), (f) and (g) of § 1701.4, each panel of names submitted in accordance with the aforementioned

paragraphs contains at least two names for each vacancy.

(c) Where any member ceases to serve in the official position from which he or she was originally appointed under § 1701.4, that place on the Commission is deemed to be vacant.

(d) Thirteen members of the Commission constitute a quorum, but two or more members constitute a quorum for the purpose of conducting hearings.

§ 1701.7 Commission personnel.

(a) *Executive Director*. Is appointed by the Commission itself. He is appointed without regard to the Civil Service laws or Classification Act of 1949, and without regard to political affiliation. He is appointed solely on the basis of fitness to perform the duties of the position.

(b) *Other employees*. Subject to the provisions of part 1720 of this chapter and of such other rules and regulations as the Commission may adopt, the Chairman, without reference to the Civil Service laws and the Classification Act of 1949, and without regard to political affiliation, may appoint, fix the compensation of, and remove such other personnel as he deems necessary.

(c) *Temporary employees*. The Chairman may also procure temporary and intermittent services to the same extent as is authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a), but at rates not to exceed the daily rate for a GS–18.

§ 1701.8 Activities of the Commission.

The primary role of the Commission is to give advice. It issues no rules or regulations governing the general public, and the advice it gives is addressed to various levels of the American government, such as the Congress of the United States, and the States, counties, and cities. The advice it gives is contained in its recommendations and reports, and these in turn are based on research conducted by the Commission and its staff.

(a) *Selection of research topics—policy applied*. The policy applied by the Commission in the choice of research topics is to select ones which will strengthen the federal system, and promote the power balance and fiscal balance among the various levels of government. Weight is given to new ways of dealing with practical intergovernmental problems. Routine and continual re-evaluation of the same topic will be avoided whenever possible.

(b) *Selection of research topics—criteria*. The Commission, by vote of its members, selects all research projects and approves acceptance of all research grants. Its selections take into account the following general criteria:

(1) Importance of the subject area,

(2) Timeliness of the issues,

(3) Utility to the governmental levels,

(4) Compatability with the competence of the staff, and

(5) Appropriateness for the Commission's composition and procedures.

(c) *Outside requests for research*. The Commission undertakes research requested by the Congress and by executive agencies to the extent that its work program and resources allow. However, where such requests do not meet the Commission's research selection criteria or where undertaking the work would impede other important work in progress, the Commission will necessarily seek additional funding to expend its work capacity temporarily. The Commission does not make research grants to other outside parties on topics those parties have selected for study nor will it request appropriation for such studies.

(d) *Special funding of projects*. ACIR will seek and accept grants for work on intergovernmental subjects that accord with the Commission's finding that the subject is of prime intergovernmental importance, if it is within the capacity of the staff—or outside scholars and consultants engaged for this purpose—to produce a study that meets the Commission's usual standards of quality.

§ 1701.9 Step-by-step development of Commission recommendations.

The Commission itself selects the research projects to be undertaken and assigns the priority to be given among projects. In making its selection the Commission may consider exploratory research by the ACIR staff, the Commission members expertise, and any other information the Commission members have. Thereafter:

(a) *Working outline.* An outline of the project is prepared by the one or more staff members assigned to it by the Executive Director. In addition, the Chairman in his or her discretion, may assign one or more Commission members to monitor the staff work. The working outline covers the issues to be dealt with and the research techniques to be used. This outline is sent to the Commission members and reviewed at a ''Thinkers'' Session.

(b) *Thinkers session.* The participants at a Thinkers Session are selected by the staff, after seeking suggestions from Commission members. Participants are usually professors, researchers, and other experts who have a special knowledge and interest in the subject matter of the project. If Commission members have been assigned to oversee the work, every effort will be made to enable them to attend. Thinkers Sessions are held at times convenient to the participants and are usually held at the ACIR headquarters in Washington, but may be held elsewhere if necessary for the convenience of the participants.

(c) *Preliminary draft.* Following the Thinkers Session, the working outline will be appropriately revised and the staff will conduct the research work and prepare a preliminary draft of the study that may include a range of possible legislative recommendations for Commission consideration.

(d) *Critics session.* After being reviewed internally, the preliminary draft is subjected to review and criticism by an informal group of critics, some of whom may have been members of the thinkers group. The critics also provide expert knowledge and a diversity of substantive and philosophical viewpoints. Care is taken to include among the critics representatives of national associations of state and local officials, as well as of Congress and federal departments and agencies. If Commission members have been assigned to oversee the work, every effort is made to encourage them to attend any meeting of the critics. Participants in a critics session are selected by the staff after seeking suggestions from Commission members. Responses to the criticisms and suggestions presented at a critics meeting are determined by the staff.

(e) *Revision and submission to Commission.* The draft report is then revised by the staff in light of criticisms and comments received both orally and in writing from critics, Commission members and others. A summary of the draft report, along with potential recommendations, is included in a ''Docket Book'' and transmitted to Commission members at least three weeks in advance of the meeting at which it is to be considered. To the maximum extent feasible, copies of the entire report are made available to all interested parties at least two weeks before the full Commission considers the study.

(f) *Advisory committee.* In exceptional projects the Executive Director, or the Commission, may appoint a committee of advisors to help guide the research. The committee will consist of academics and practitioners who have special competence and interest in the subject under study and, particularly, who are familiar with the latest developments in the field. The committee advises the staff and the Commission on all phases of the research, from initiating the research design to developing proposed recommendations. The committee's activities supplement but do not replace thinkers and critics sessions.

(g) *Adoption of recommendations.* The draft recommendations are then considered and separately voted upon by the Commission in meeting. Majority vote of those present is required for approval. Extensive amendments and new germane matter must be set forth in writing and be made available to each member attending the meeting before they can be voted upon. New matter determined to be non-germane by the Chairman is referred to the staff with instructions on how to deal with the material.

(h) *Dissent.* Members are free to dissent from actions adopted by the Commission and may have that dissent registered in any of several ways. If requested, the names of dissenting members will be shown in the minutes of the meeting where the vote was taken. To the extent dissenting members feel the minutes fail to reflect adequately

the nature of their dissent, they may, with Commission approval, have the minutes revised to present their viewpoint more fully. If a report is involved, the member may be listed as having dissented on a point at an appropriate location in the text of the report. In addition, if the member wishes, a statement of dissent may be included in the report at some appropriate place. On request, the staff will assist members in drafting explanatory dissent statements for inclusion in either the minutes or reports.

(i) *Informal action by the Commission—polling*. The Chairman, on his own motion, may poll the membership of the Commission to determine the views of members on matters on the agenda of a regular or special meeting of the Commission but which were not considered by the Commission. Votes so obtained may either be by mail or by telephone, but if by telephone, they must be confirmed in writing. The result of any poll is reported in the Docket Book for the next session of the Commission for ratification. At that time it is subject to a motion to reconsider, but not at any later time.

§ 1701.10 Other activities of the Commission.

(a) The Commission devotes the necessary amount of ACIR staff time to technical assistance, publications, and education activities so as to disseminate Commission reports and encourage study of emerging public problems which may require adoption of Commission legislative recommendations. In carrying out these implementation activities, Commission members and the staff conduct and participate in press conferences, briefings for legislative and policy officials, legislative hearings, seminars and workshops, technical assistance visits to specific jurisdictions, and other activities appropriate to its statutory mandate.

(b) *Support activities*. In support of its implementation activities, the Chairman and members of the Commission complement the staff work by participating in press conferences and briefings for legislative and policy officials, testifying before Congressional committees and state and local legislative bodies, participating in their home states in press and legislative activities to generate interest in ACIR reports and recommendations and to advance their implementation, making speeches as representatives of the Commission, serving as a two-way communications channel with the ACIR staff, and undertaking such other assignments on behalf of the Commission as may be appropriate.

(c) *Publications*. ACIR reports containing legislative recommendations or Commission ''findings'' or ''conclusions'' (''A'' series) and major research reports not containing legislative recommendations (''M'' series) are published only after approval by the Commission. Other reports and publications may be published with the approval of the Executive Director as follows:

Public Opinion Survey (''S'' series)
Intergovernmental Perspective
In Brief (''B'' series)
''What is ACIR''' Brochure
Publications List
Staff Working Papers
Information Bulletins

(d) *Hearings*. Whenever in the opinion of the Commission it is necessary or desirable to have a factual determination based on the testimony of sworn witnesses in an adjudicatory-type hearing, or to provide a forum for receiving statements from interested persons or members of the public, or a part thereof, in a legislative-type hearing, the Commission, or a sub-committee of the Commission (when authorized by the Commission) or any number of members thereof (not less than two) may hold a public hearing. Factors weighed when determining whether or not to hold a hearing include, but are not limited to:

(1) The extent to which all directly affected interests were represented in the critics session.

(2) Whether directly affected interests have requested a hearing with the Commission.

(3) The extent to which a report contains findings, conclusions or potential recommendations on which identifiable interests are in sharp disagreement.

(4) The extent to which hearings may be a good device for directing public attention to the Commission, the report, or both.

(5) Whether in meetings away from Washington a hearing will be a good device for calling attention to the Commission's presence in a particular community or region.

PART 1702—BYLAWS OF THE COMMISSION

Sec.
1702.1 Establishment.
1702.2 Members.
1702.3 Officers.
1702.4 Responsibilities and duties of the Commission and Commission members.
1702.5 Duties and powers of the Chairman and Vice-Chairman.
1702.6 Commission meetings.
1702.7 Staff—powers and limitations.
1702.8–1702.10 [Reserved]

AUTHORITY: Pub. L. 86–380 of Sept. 24, 1959; 73 Stat. 703 (42 U.S.C. 4271).

SOURCE: 51 FR 24802, July 9, 1986, unless otherwise noted.

§ 1702.1 Establishment.

The Act establishing the Advisory Commission on Intergovernmental Relations, 42 U.S.C. 4271 *et seq.* (1959), 73 Stat. 703, empowers the Commission to regulate to the extent it deems desirable for the purpose of carrying out the provisions of this Act the holding of hearings, taking of testimony and fixing the time and place of meetings (42 U.S.C. 4276(a)), rules covering the appointment and compensation of employees and the procurement of temporary and intermittent services (42 U.S.C. 4276(d)). In addition, the Commission is required to publish regulations implementing the provisions of the Freedom of Information Act (5 U.S.C. 552(a)), and the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a). These bylaws are designed to carry out these regulatory obligations.

§ 1702.2 Members.

Public Law 86–380, Sec. 3 (42 U.S.C. 4273), provides that the Commission consist of 26 members serving two-year terms—three U.S. Senators appointed by the President of the Senate, three members of the U.S. House of Representatives appointed by the Speaker of the House, three private citizens and three officers of the Executive Branch appointed by the President of the United States, and fourteen elected officials of state and local governments nominated by their respective national associations and appointed by the President of the United States. Except for the private citizen and Executive Branch members, appointments must have bipartisan balance within each membership group. The state and local officials on the Commission are divided into the following groups: four governors, three state legislators, four mayors and three elected county officials. Members serve until their terms expire and their replacements have been appointed, or until they leave public office in the membership category they represent. Members are eligible for reappointment.

§ 1702.3 Officers.

In accordance with section 4(b) of Pub. L. 86–380 (42 U.S.C. 4274(b)), the President designates the Chairman and Vice-Chairman from among the members of the Commission.

§ 1702.4 Responsibilities and duties of the Commission and Commission members.

(a) *Studies, recommendations and reports.* In accordance with section 5 of Pub. L. 86–380 (42 U.S.C. 4275), the Commission is responsible for choosing topics to study and consider, for recommending ''ways and means for fostering better relations between the levels of government,'' and for submitting reports to the President, Congress and any other unit of government or organization, including an annual report to the President and Congress. The Commission, or the Chairman upon explicit delegation by the Commission, must approve publication of each formal report containing legislative recommendations (series ''A'' reports) and information reports (series ''M'' reports).

(b) *Meeting and hearings.* The Commission, by majority vote of those attending the meeting, may call meetings and hearings at such times and places as it deems appropriate.

(c) *Executive Director.* In accordance with section 6(c) of Pub. L. 86–380 (42 U.S.C. 4276(c)), as amended, the Commission appoints at a regular or special

meeting, compensates and removes the Executive Director.

(d) *Committees.* The Commission may establish such committees as it deems necessary or desirable to guide research, to hold hearings, or to perform other duties.

(e) *Responsibilities and duties of Commission members.* Members are expected to:

(1) Attend all meetings.

(2) Be familiar with docket book contents.

(3) Be prepared to discuss and vote on proposed recommendations.

(4) Attend ACIR public hearings and suggest witnesses.

(5) Make speeches and appearances on behalf of ACIR.

(6) Testify for ACIR at Congressional hearings.

(7) Upon request of the Chairman, serve on Commission committees.

Any member authorized by the Commission may administer oaths or affirmations to witnesses appearing before the Commission or any committee or members thereof (section 6(a), Pub. L. 86–380 (42 U.S.C. 4276(a)).

§ 1702.5 Duties and powers of the Chairman and Vice-Chairman.

(a) *Personnel.* Subject to rules and regulations adopted by the Commission, the Chairman is empowered by section 6(d) of Pub. L. 86–380 (42 U.S.C. 4276(d)) to appoint, fix the compensation of, and remove all personnel other than the Executive Director, without regard to civil service laws or political affiliation; and to procure the services of temporary and intermittent employees.

(b) *Information requests.* The Chairman is empowered to request necessary information of federal departments and agencies to be furnished by them as required by Pub. L. 86–380, 42 U.S.C. 4276(b). The Vice-Chairman also is empowered to request such information.

(c) *Presiding and voting.* The Chairman shall preside at all meetings of the Commission. In the absence of the Chairman, the Vice-Chairman shall preside at Commission meetings. In the absence of both the Chairman and Vice-Chairman, the Commission member who will preside shall have been designated by the Chairman or failing such designation, by majority vote of those attending. The Chairman votes only in the case of a tie or when a vote is taken by written ballot.

(d) *Committees.* The Chairman may establish committees as necessary.

(e) *Hearings.* The Chairman may call hearings and fix their time and place.

(f) *Encouraging attendance and reducing absenteeism.* The Chairman shall promote regular attendance by Commission members at regular Commission meetings and other Commission functions. Whenever a member misses three or more consecutive regular Commission meetings, the Chairman shall write the member, on behalf of the Commission, requesting the member's resignation. The Chairman shall send a copy of his letter to the officials responsible under the law for nominating and appointing that member to the Commission, noting his record of absenteeism and suggesting that efforts be made to vacate the seat so that a new member may be nominated. Every effort will be made to make attendance expectations known to all new members and to officials making nominations and appointments.

§ 1702.6 Commission meetings.

(a) *Time and place.* The Commission intends in the exercise of its discretion provided by Pub. L. 86–380, section 6(a) (42 U.S.C. 4276(a)), to meet quarterly at the call of the Chairman, except in even numbered election years when the fall quarter meeting may be cancelled. Additional meetings may be called by the Chairman or by a majority of all the Commission members. Commission meetings shall be held, upon due notice, at such times and places as the Chairman or the Commission shall determine. The Commission also intends, in the exercise of its discretion, that at least one of its meetings each year be held outside Washington, D.C.

(b) *Setting meeting agendas—notice.* With the approval of the Chairman, the Executive Director will establish the agenda for each regular meeting and shall notify the members of its contents by sending out a docket book at least three weeks in advance of the meeting. Members wishing items placed on the agenda may request the

Chairman to do so. By vote of a majority of the members at the meeting, the agenda may be revised.

(c) *Adoption of Robert's Rules of Order.* The rules contained in *Robert's Rules of Order Revised*, 1971, shall govern the Commission in all cases to which they are applicable to the extent they are not inconsistent with these bylaws.

(d) *Quorum.* ''Thirteen members of the Commission shall constitute a quorum for the transaction of business, but two or more members shall constitute a quorum for the purpose of conducting hearings.'' [Pub. L. 86–380 section 4(3); 42 U.S.C. 427(e).]

(e) *Substitute for Federal executive members.*[1] Federal executive members may designate one permanent substitute of at least Assistant Secretary rank or equivalent to act fully in his or her stead as a member of the Commission. Accordingly, such substitutes for Federal Executive members may participate in Commission debates and vote on all matters. Such named substitute designations by Federal Executive members shall be for the term of the member.

(f) *Polling.* The Chairman, on his own motion, may poll the membership to determine the views of the members on matters on the agenda of a regular or special meeting of the Commission but which were not considered by the Commission, or where he wishes to increase the number of members voting, or where he determines there is some administrative purpose to be served. Such voting shall either be by mail or, if by telephone, shall be confirmed in writing. The result of any poll shall be reported in the Docket Book for the following meeting of the Commission and shall be subject to a motion to reconsider at the following meeting but not at any other later time.

(g) *Acceptance of outside financial assistance.* No outside financial assistance is accepted without approval by the Commission. The Chairman, in his discretion, may request such approval by placing it in the Commission's regular agenda or by polling the members in accordance with Article VI of the Bylaws.

[1] In amending and reaffirming this provision for alternate members from the Executive Branch, the Commission emphasized its desire that members of the President's Cabinet be appointed to the Commission and attend its meetings whenever possible. The Commission also stressed that an alternate substituting for an Executive Branch member should be the same person from one meeting to the next and should represent the views of the regular member with continuity. Although the Commission recognized that it might be necessary to change the designation of an alternate, the Commission urged that such changes be kep to a minimum in the interest of strengthening continuity within the Commission.

§ 1702.7 Staff—powers and limitations.

(a) *Duties and powers of the Executive Director.* The Executive Director directs and manages the staff in carrying out the directions of the Commission and the Chairman; represents the Commission before a variety of audiences including the Congress and its committees, the Executive Office of the President and other federal agencies, national and state associations of state and local officials, state and local governments, the media, schools and universities, and the general public; and undertakes and directs such other activities as the Executive Director and the Chairman of the Commission deem in the best interest of improved intergovernmental relations throughout the nation.

(b) *Commission's role in drafting legislative materials.* Any proposed legislation drafted by the staff to carry out Commission recommendations is to be approved by the Commission at a regularly scheduled Commission meeting before that material is transmitted to Congress, to state legislatures, to other interested groups, or to any other source.

§§ 1702.8—1702.10 [Reserved]

PART 1703—PUBLIC AVAILABILITY OF DOCUMENTS AND RECORDS

Subpart A—Freedom of Information Act Implementation

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AUTHORITY: 5 U.S.C. 552, 552a, and 571–576.

SOURCE: 51 FR 24804, July 9, 1986, unless otherwise noted.

Subpart A—Freedom of Information Act Implementation

§ 1703.1 General.

This part implements section 552 of title 5, United States Code, and prescribes rules governing the availability to the public of documents and records of the Advisory Commission on Intergovernmental Relations.

§ 1703.2 Publications.

(a) Complete lists of Legislative Recommendations and Reports, together with the texts of those Recommendations, Reports and other publications are maintained in the Offices of the Commission.

(b) The Annual Report of the Commission contains a list of all Legislative Recommendations and Commission Reports adopted during the preceding year. It also contains descriptive material regarding the work of the Commission. The Annual Report is available from ACIR. Single copies of current and past Annual Reports will also be furnished by the Commission on request, to the extent that supplies on hand permit.

(c) The Commission endeavors to maintain for distribution to interested persons an adequate stock of reports, copies of congressional testimony, newsletters, minutes of recent committee meetings, and other documents of general interest. Requests for single copies of such documents will be filled at cost to the extent that supplies on hand permit.

§ 1703.3 Requests for records.

(a) It is the policy of the Commission to make records and documents in its possession available to the public to the greatest extent possible. All records of the Commission are available for public inspection and copying in accordance with this section except those records or portions of records as to which the Director or his designee specifically determines that:

(1) They fall within a particular exemption in section 552(b) of the Freedom of Information Act and

(2) Disclosure would not be consistent with the national interest, the protection of private rights or the efficient conduct of Commission business.

(b) A request for records, other than for documents which are published in the FEDERAL REGISTER or available for sale or distribution as described in § 1703.2, shall be made in writing and directed to the Executive Director, Advisory Commission on Intergovernmental Relations, 1111 20th Street, NW., Washington, DC 20575. Such request shall be clearly marked ''Freedom of Information Request'' or ''Information Request'' and shall reasonably describe the record requested. The staff of the Commission will make reasonable efforts to assist a requester in formulating his request. Nothing in this section shall preclude staff of the ACIR from complying with oral, unmarked, or generally stated requests for information and documents.

(c) The Executive Director or his designee shall, within ten working days after its receipt, either comply with or deny a request for records, provided that when additional time is required because of:

(1) A need to search for, collect and examine a voluminous amount of separate and distinct records demanded in a single request, or (2) a need for consultation with another agency having a substantial interest in the determination of the request, the time limit for disposing of the request may be extended for up to ten additional working days by a written notice to the requester setting forth the reasons for and the anticipated length of the delay.

(d)(1) Where it appears to the Executive Director or his designee that fees

chargeable under § 1703.6 of this regulation for compliance with the request will exceed $25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. The notification shall offer the requester the opportunity to confer with Commission personnel with the object of reformulating the request so as to meet his needs at lower cost.

(2) Where the anticipated fee chargeable under this part exceeds $50, an advance deposit of 25% of the anticipated fee or $25, whichever is greater, may be required. Where a requester has previously failed to pay a fee under this part, an advance deposit of the full amount of the anticipated fee may be required.

(e) The requester will be notified promptly of the determination made pursuant to paragraph (c) of this section. If the determination is to release the requested record, such record shall promptly be made available. If the determination is not to release the record, the person making the request shall, at the same time he is notified of such determination, be notified of:

(1) The reason for the determination;

(2) The name and title or position of each person responsible for the denial of the request; and

(3) His right to seek judicial review of such determination pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552(a)(4).

§ 1703.4 Index.

The Freedom of Information Act, 5 U.S.C. 552(a)(2), requires each agency to maintain and make available for public inspection and copying a current index of certain materials issued, adopted or promulgated by the agency. With respect to the materials covered by section 552(l)(2)(B), the Commission maintains currently for distribution a complete list of Commission Recommendations (''A'' Series) and Reports (''M'' Series), and other reports. The Commission has no adjudicatory responsibilities of the kind contemplated by section 552(a)(2)(A) of the Act and does not ordinarily issue materials of the type described in section 552(a)(2)(C). Should such materials be issued, appropriate indexes will be maintained.

§ 1703.5 Policy with respect to request for particular kinds of documents.

This section is intended to amplify the policy set out in § 1703.3(a) as applied to specific categories of documents:

(a) All materials which are distributed to the membership of the Commission (Docket Book) for consideration at a plenary session will upon distribution be available to the public in accordance with § 1703.2(d) of these regulations.

(b) Consultant and staff reports which are otherwise exempt from disclosure under the Freedom of Information Act as interagency or intra-agency correspondence will, absent special circumstances, be made available if the reports are in substantially completed form and have been distributed widely for comment within or outside the Government. Tentative reports and working drafts which have received only limited circulation will ordinarily not be made available.

(c) Agency comments on a report or proposed legislative recommendation, even if exempt from disclosure under the Freedom of Information Act, will nevertheless ordinarily be made available unless the agency indicates to the Commission that its comment is confidential. Comment of an individual Commission member, writing in his personal capacity, will not be made available without the consent of the member.

(d) The following categories of documents are declared to be available to the public, notwithstanding any applicable exemption in section 552(b) of the Freedom of Information Act:

(1) Agency reports on the implementation of Commission recommendations;

(2) Correspondence from the Office of the Chairman of the Commission or the Executive Director to committees of Congress, commenting on pending legislation;

(3) Minutes of meetings of the standing committees of the Commission.

(4) Transcripts or minutes of Commission meetings.

§ 1703.6 Schedules of fees.

The Executive Director may charge a fee for searching for and copying documents or records requested pursuant to § 1703.3, as follows:

(a) The fee for copies shall be $0.10 per copy per page. Copying fees of less than $3 per request are waived.

(b) The search charge shall be $9 per hour for the services of non-professional personnel and $15 per hour for the services of professional personnel. Search charges shall be calculated to the nearest quarter hour. There shall be no search charge for searches requiring less than one-half man hour.

(c) No fee will be charged in connection with any record which is not made available because it is found to be exempt from disclosure.

(d) Charges may be waived or reduced where the Executive Director determines that such waiver or reduction is in the public interest.

Subpart B—Privacy Act Implementation

§ 1703.20 Purpose and scope.

The purpose of this subpart is the implementation of the Privacy Act of 1974, 5 U.S.C. 552a, by establishing procedures whereby an individual can determine if a system of records maintained by the Commission contains a record pertaining to himself, and procedures for providing access to such a record for the purpose of review, amendment, or correction. Requests for assistance in interpreting or complying with these regulations should be addressed to the Executive Director, Advisory Commission on Intergovernmental Relations, 1111 20th Street, NW., Washington, DC 20575.

§ 1703.21 Definitions.

As used in this subpart, the terms *individual, maintain, record, system of records*, and *routine use* have the meaning specified in 5 U.S.C. 552a(a).

§ 1703.22 Procedures for requests pertaining to individual records in a system of records.

(a) An individual can determine if a particular system of records maintained by the Commission contains a record pertaining to himself by submitting a written request for such information to the Executive Director. The Executive Director or his designee will respond to a written request under this subpart within a reasonable time by stating that a record on the individual either is or is not contained in the system.

(b) If an individual seeks access to a record pertaining to himself in a system of records, he shall submit a written request to the Executive Director. The Executive Director or his designee will, within ten working days after its receipt, acknowledge the request and if possible decide if it should be granted. In any event, a decision will be reached promptly and notification thereof provided to the individual seeking access. If the request is denied, the individual will be informed of the reasons therefor and his right to seek judicial review.

(c) In cases where an individual has been granted access to his records, the Executive Director may, prior to releasing such records, require the submission of a signed notarized statement verifying the identity of the individual to assure that such records are disclosed to the proper person. No verification of identify will be required when such records are available under the Freedom of Information Act, 5 U.S.C. 552, as amended.

§ 1703.23 Request for amendment or correction of a record.

(a) An individual may file a request with the Executive Director for amendment or correction of a record pertaining to himself in a system of records. Such written request shall state the nature of the information in the record the individual believes to be inaccurate or incomplete, the amendment or correction desired and the reasons therefor. The individual should supply whatever information or documentation he can in support of his request for amendment or correction of a record.

(b) The Executive Director or his designee will, within ten working days after its receipt, acknowledge a request for amendment or correction of a record. A decision will be reached promptly and notification thereof provided to the individual seeking to amend or correct a record. The Executive Director may request such additional information or documentation as he may deem necessary to arrive at a decision upon the request. If the request is granted, the record as amended will be called to the attention of all prior recipients of the individual's record.

(c) If the request is denied, the individual will be informed of the reasons therefor and his right to appeal the denial in writing to the Chairman of the Commission. The Chairman will render a decision on an appeal within thirty working days following the date on which the appeal is received. The individual will be notified promptly of the Chairman's decision and, if the appeal is denied, the reasons therefor and the individual's right to seek judicial review and his right to file a concise statement of disagreement, which statement will be noted in the records to which it pertains and supplied to all prior and subsequent recipients of the disputed record. If an appeal is granted, the record as amended will be called to the attention of all prior recipients of the individual's record.

(d) Requests for amendment or correction of a record must be accompanied by a signed notarized statement verifying the identity of the requesting party.

§ 1703.24 Disclosure of a record to a person other than the individual to whom it pertains.

Except in accordance with 5 U.S.C. 552a(b), or as required by the Freedom of Information Act, 5 U.S.C. 552, as amended, or other applicable statute, the Commission will not disclose a record to any individual other than the individual to whom the record pertains without the written consent of such individual. An accounting of the date, nature, and purpose of each disclosure of a record as well as the name and address of the person or agency to whom the disclosure was made will be maintained. This accounting will be made available to the individual to whom the record pertains upon the submission of a written, notarized request to the Executive Director.

§ 1703.25 Schedule of fees.

Copies of record supplied to any individual at his request shall be provided for $.10 per copy per page. Copying fees of less than $3 per request are waived.

PART 1720—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4574, 4579, Feb. 5, 1986, unless otherwise noted. Redesignated at 51 FR 24800, July 9, 1986.

§ 1720.101 Purpose.

This part effectuates 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.

§ 1720.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1720.103 Definitions.

For purposes of this part, the term—

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, telecommunications devices 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.

Handicapped person 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 of 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 illness, and drug addition and alcholism.

(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 handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person 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; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1720.140.

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), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4574, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 1720.104—1720.109 [Reserved]

§ 1720.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, 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 handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

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

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

(2) A description of any modifications made.

§ 1720.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part 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.

§§ 1720.112—1720.129 [Reserved]

§ 1720.130 General prohibitions against discrimination.

(a) No qualified handicapped person 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 handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person 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 handicapped person 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 handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person 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 handicapped person 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 handicapped persons 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 handicapped persons.

(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 handicapped persons 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 handicapped persons.

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

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

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

§§ 1720.131—1720.139 [Reserved]

§ 1720.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected 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.

§§ 1720.141—1720.148 [Reserved]

§ 1720.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1720.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, 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.

§ 1720.150 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 handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) 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 § 1720.150(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 handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*. 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 handicapped persons. The agency is nor 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 handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, 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 October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, 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 handicapped persons;

(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.

[51 FR 4574, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 1720.151 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 handicapped persons. 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.

§§ 1720.152—1720.159 [Reserved]

§ 1720.160 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 a handicapped person 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 handicapped person.

(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.

(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 §1720.160 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, handicapped persons receive the benefits and services of the program or activity.

§§ 1720.161—1720.169 [Reserved]

§ 1720.170 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 or 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 Personnel Officer shall be responsible for coordinating implementation of this section. Compliants may be sent to Budget and Management Officer, Advisory Commission on Intergovernmental Relations, Suite 2000, Vanguard Building, 1111 20th St., NW., Washington, DC 20575.

(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), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(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;

(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 §1720.170(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.

[51 FR 4574, 4579, Feb. 5, 1986, as amended at 51 FR 4574, Feb. 5, 1986]

§§ 1720.171—1720.999 [Reserved]