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YOUR RIGHTS AS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964, as amended, ensures that no person in the United States shall, on the grounds of race, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.

PROTECTIONS INCLUDE BUT ARE NOT LIMITED TO: PUBLIC WAITING AREAS, PASSENGER HOLDING AREAS, SERVICE, QUALITY OF SERVICE, ROUTING, SCHEDULING, SNACK BARS, GIFT SHOPS, TICKET COUNTERS, BAGGAGE HANDLERS, CAR RENTAL AGENCIES, TAXIS, RESTAURANTS FACILITIES, RESTROOMS, PASSENGER GROUND TRANSPORTATION

Any person who believes that he or she, has been subjected to discrimination prohibited under Title VI of the Civil Rights Act of 1964, as amended, may file a complaint. For more information on Title VI, please visit the Connecticut Department of Transportation website at www.ct.gov/dot under Civil Rights and Accessibility.

Complaints Forms are in the Title VI Coordinator's Office. Complaints can be filed with either of the following:

Kathleen O'Neil
Title VI Coordinator
486 Oxford Road
Oxford, CT 06478
grantadmin@oxford-ct.gov

Phone: (203) 888-2543 x3067
Fax: (203) 888-2136

FTA Title VI Program Coordinator
East Building, 5th Floor TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

TOWN OF OXFORD
MaryAnn Drayton-Rogers
First Selectman

S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
Phone: (203) 888-2543 ext. 3012 Fax: (203) 888-2136
E-mail: selectmen@oxford-ct.gov

Office of the First Selectman

AFFIRMATIVE ACTION POLICY STATEMENT

As First Selectman of the Town of Oxford, I recognize the need for Affirmative Action and I pledge my commitment to undertake positive actions to overcome the present effects of past practices or barriers to equal employment opportunity and to achieve the full and fair participation of minorities, women, people with disabilities, older persons, and all other protected groups found to be underutilized in the Town of Oxford's work force or affected by policies having an adverse impact. In the spirit of Executive Order 11, signed by Governor Ella Grasso November 32, 1975, and Executive Order 9 signed by Governor William A. O'Neill on January 3, 1984, I further state that this Town of Oxford will comply with the anti-discrimination provisions of the State and Federal laws and regulations listed at the end of this section.

I recognize the hiring difficulties experienced by minorities, people with disabilities and by many older persons and, where appropriate, I have set goals to overcome the present effects of past discrimination, if any, to achieve the full and fair utilization of such persons in the work force. I further pledge that the Town of Oxford will affirmatively provide services and programs in a fair and impartial manner.

Where adverse impact is identified, the Town of Oxford will: (1) review its personnel policies and procedures to ensure that barriers, which unnecessarily exclude protected classes and practices, which have an illegal discriminatory impact, are identified and eliminated; (2) explore alternative approaches to employ minorities and members of protected classes; (3) administer all terms, conditions, privileges and benefits of the employment process in an equitable manner; and (4) establish procedures for the extra effort that may be necessary to ensure that the recruitment and hiring of protected group members reflect their availability in the job market.

It is the policy of the Town of Oxford to provide equal employment opportunities without consideration of race, color, religion, age, sex, marital status, national origin, genetic information , past/present history of mental disability, ancestry, mental retardation, learning or physical disabilities including but, not limited to blindness, sexual orientation, political belief or criminal record, unless the provisions of Section 46a-60(b), 46a-80(b) and 46a-81(b) of the Connecticut General Statutes are controlling or there is a bonafide occupational qualification excluding persons in one of the above protected groups. This policy applies to all aspects of the employer/employee relationship including, but not limited to, recruitment, hiring, referrals, classifying, advertising, training, upgrading, promotion, benefits, compensation, discipline, layoff and terminations.

The Town of Oxford will implement, monitor and enforce this Affirmative Action Policy Statement in conjunction with the applicable federal and state laws, regulations, executive orders listed below: 13th, 14th and 15th Amendments of the United States Constitution, Civil Rights Act of 1866, 1870,1871, Equal Pay Act of 1963, Title VI and VII of the 1964 United States Civil Rights Act, presidential Executive Orders 11246 amended by 11375, (Nondiscrimination under federal contracts), Act 1 Section 1 and 20 of the Connecticut Constitution, Governor Grasso's Executive Order Number 11, Governor O'Neill Executive Order Number 9, the Connecticut Fair Employment Practices Law (46a-63-64). Discrimination against Criminal Offenders (46a-80). Connecticut General Statutes, Connecticut Code of Fair Accommodations Law (46-63-64), definition of Blind (46a-51), definition of Physically Disabled (46a-51 (15), definition of Mentally Retarded (46a-51 (13), cooperation with the Commission of Human Rights AND Opportunities (46a-77), Sexual Harassment (46-60-(a) Connecticut Credit Discrimination Law (360436 through 439), Title 1 of the State and the Local Fiscal Assistance Act of 1972 and the Americans with Disabilities Act of 1992.

This policy statement will be given annually to all Town of Oxford employees and will also be posted through the Town of Oxford. I also expect each supplier, union, consultant and other entity (s) with which we do business to comply with all applicable State and Federal Equal Opportunity laws and regulations. The Town of Oxford will not knowingly do business with any entity debarred from participation in any federal or state program or found to be in violation of any state or federal anti-discrimination law.

I have assigned the responsibility to achieve the successful implementation of our goals and objectives to Kathleen O'Neil, Oxford Grant Administrator/Writer, (203) 888-2543 x3067.

4/17/08
Date

Mary Ann Drayton-Rogers
Oxford First Selectman

The Town of Oxford's Title Vl Plan

The Town of Oxford assures that no persons shall on the grounds of race, color, national origin or sex as provided by Title Vl of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1964 and the Civil Rights Restoration Act of 1987 (P.L. 100.250) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The Town of Oxford further assures every effort will be made to ensure nondiscrimination in all of its programs and activities whether these programs are funded or not.

In the event the Town of Oxford distributes federal air funds to another governmental entity. The Town of Oxford will include Title Vl language in all written agreements and will monitor for compliance.

The Town of Oxford is responsible for initiating and monitoring Title Vl activities, preparing required reports and other Town of Oxford responsibilities as required by 23 CFR 200 and 49 CFR 21).

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Employment/Economic Opportuniti Lower Income Persons and Busines (Section 3)

E-mail this to a fr
Print version

Summary:
Section 3 of the HUD Act of 1968 requires, to the greatest extent feasible, that recipients of HUD funds (and their contractors and subcontractors) provide jobs and other economic opportunities to low-income persons, particularly public housi residents. Section 3 helps create employment for low-income persons a provides contracting opportunities for businesses that are owned by lov people or that provide employment to low-income people.

Purpose:
The U.S. Department of Housing and Urban Development's (HUD) prog award billions of dollars each year for projects that generate thousands contracting opportunities. Section 3 of the HUD Act of 1968 requires th recipients of HUD funds (and their contractors and subcontractors) prov and other economic opportunities to low-income persons. Through recr public housing neighborhoods, such fund recipients can make residents businesses aware of the opportunities available.

Type of Assistance:
Section 3 does not authorize funds; instead, it governs the use of funds appropriated for other HUD programs and provides job and contracting opportunities.

Eligible Grantees:
Section 3 automatically applies to grantees of HUD public housing and development programs. States, local governments, public housing auth nonprofit organizations, and their contractors and subcontractors who r funds under the programs must follow Section 3.

Eligible Customers:
For training and employment, four categories of low-income persons (c Section 3 residents) receive priority: (1) residents of the public and ass housing, (2) those living near a HUD-assisted project, (3) participants i **Youthbuild programs**, and (4) homeless persons. For contracting, bu owned by Section 3 residents, businesses that employ Section 3 reside time, and subcontractors using such businesses receive priority.

Eligible Activities:
With respect to HUD's public housing programs, Section 3 applies to fu for specific types of development, operations, and modernization. For H housing and community development programs, Section 3 applies to: (rehabilitation (including lead-based paint hazard reduction), (2) housin construction, and (3) other public construction projects. Employment o available under Section 3 include accounting, purchasing, word process

appliance repair, carpet installation, landscaping, manufacturing, carpe
catering.

Application:
Not applicable. All applicants under HUD housing and community devel
programs must certify that they will follow Section 3 requirement.

Technical Guidance:
Section 3 requirements are authorized under the Housing and Urban De
Act of 1968, Section 3, 12 U.S.C. 170lu. The program is administered b
Office of Fair Housing and Equal Opportunity.

Complaints should be sent to any HUD Field Office Fair Housing Enforce
Center, Program Operations and Compliance Center, or the Office of Fa
and Equal Opportunity. Grievances must be received within 180 days o
alleged violation of Section 3. Complaints are typically approved or disn
within 6 months.

For More Information:
The **HUD's Direct Distribution System** supplies national and local inf
and links to fair housing resources inside and outside the government.
telephone number is 1-800-767-7468.

HUD's **Fair Housing** home page provides information about the progra
Office of Fair Housing and Equal Opportunity.

7/26/2005

U.S. Department of Housing and Urban Development
451 7th Street S.W., Washington, DC 20410
Telephone: (202) 708-1112 TTY: (202) 708-1455
Find the address of a HUD office near you

FAIR HOUSING ACT

Sec. 800. [42 U.S.C. 3601 note] Short Title

This title may be cited as the "Fair Housing Act".

Sec. 801. [42 U.S.C. 3601] Declaration of Policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Sec. 802. [42 U.S.C. 3602] Definitions

As used in this subchapter--

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 [of the United States Code], receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(i) "Aggrieved person" includes any person who--

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 810.

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with--

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means--

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a).

(o) "Prevailing party" has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

[42 U.S.C. 3602 note] Neither the term "individual with handicaps" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite.

Sec. 803. [42 U.S.C. 3603] Effective dates of certain prohibitions

(a) Subject to the provisions of subsection (b) of this section and section 807 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 of this title shall apply:

(1) Upon enactment of this subchapter, to--

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: **Provided**, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

(b)Nothing in section 804 of this title (other than subsection (c)) shall apply to--

(1) any single-family house sold or rented by an owner: **Provided**, That such private individual owner does not own more than three such single-family houses at any one time: **Provided further**, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: **Provided further**, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: **Provided further**, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2)rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c)For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if--

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Sec. 804. [42 U.S.C. 3604] Discrimination in sale or rental of housing and other prohibited practices

As made applicable by section 803 of this title and except as exempted by sections 803(b) and 807 of this title, it shall be unlawful--

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)

(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or

rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwelling in such a manner that--

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)

(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)

(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act to receive and process complaints or otherwise engage in enforcement activities under this title.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this title.

(7) As used in this subsection, the term "covered multifamily dwellings" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual

whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Sec. 805. [42 U.S.C. 3605] Discrimination in Residential Real Estate-Related Transactions

(a) In General.--It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Definition.--As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance--

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal Exemption.--Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Sec. 806. [42 U.S.C. 3606] Discrimination in provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

Sec. 807. [42 U.S.C. 3607] Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)

(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing

for older persons.

(2) As used in this section "housing for older persons" means housing --

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by persons 55 years of age or older, and--

(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall--

(I) provide for verification by reliable surveys and affidavits; and

(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2)(B) or (C): **Provided**, That new occupants of such housing meet the age requirements of sections (2)(B) or (C); or

(B) unoccupied units: **Provided**, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2)(B) or (C).

(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(5)

(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that--

(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

Sec. 808. [42 U.S.C. 3608] Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties and power to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5 [of the United States Code]. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall--

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such

studies, including an annual report to the Congress--

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which--

(i) investigations are not completed as required by section 810(a)(1)(B);

(ii) determinations are not made within the time specified in section 810(g); and

(iii) hearings are not commenced or findings and conclusions are not made as required by section 812(g);

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices;

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter; and

(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).

(f) The provisions of law and Executive orders to which subsection (e)(6) applies are--

(1) title VI of the Civil Rights Act of 1964;

(2) title VIII of the Civil Rights Act of 1968;

(3) section 504 of the Rehabilitation Act of 1973;

(4) the Age Discrimination Act of 1975;

(5) the Equal Credit Opportunity Act;

(6) section 1978 of the Revised Statutes (42 U.S.C. 1982);

(7) section 8(a) of the Small Business Act;

(8) section 527 of the National Housing Act;

(9) section 109 of the Housing and Community Development Act of 1974;

(10) section 3 of the Housing and Urban Development Act of 1968;

(11) Executive Orders 11063, 11246, 11625, 12250, 12259, and 12432; and

(12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.

Sec. 808a. [42 U.S.C. 3608a] Collection of certain data

(a) In general

To assess the extent of compliance with Federal fair housing requirements (including the requirements established under title VI of Public Law 88-352 [42 U.S.C.A. {2000d et seq.] and title VIII of Public Law 90-284 [42 U.S.C.A. {3601 et seq.]), the Secretary of Housing and Urban Development and the Secretary of Agriculture shall each collect, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development, housing assistance, and mortgage and loan insurance and guarantee program administered by such Secretary. Such data shall be collected on a building by building basis if the Secretary involved determines such collection to be appropriate.

(b) Reports to Congress

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall each include in the annual report of such Secretary to the Congress a summary and evaluation of the data collected by such Secretary under subsection (a) of this section during the preceding year.

Sec. 809. [42 U.S.C. 3609] Education and conciliation; conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of Title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

Sec. 810. [42 U.S.C. 3610] Administrative Enforcement; Preliminary Matters

(a) Complaints and Answers. --

(1)

(A)

(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint--

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this title;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this title, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)

(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative Report and Conciliation. --

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this title.

(5)

(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing--

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements; and

(v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to Comply With Conciliation Agreement. -- Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814 for the enforcement of such agreement.

(d) Prohibitions and Requirements With Respect to Disclosure of Information. --

(1) Nothing said or done in the course of conciliation under this title may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the

Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt Judicial Action. --

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 812 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under section 814(a) and 814(c) or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or Local Proceedings. --

(1) Whenever a complaint alleges a discriminatory housing practice--

(A) within the jurisdiction of a State or local public agency; and

(B) as to which such agency has been certified by the Secretary under this subsection; the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless--

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)

(A) The Secretary may certify an agency under this subsection only if the Secretary determines that--

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency; and

(iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this title.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on the date of the enactment of the Fair Housing Amendments Act of 1988 and ends 40 months after such date, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this title on the day before such date shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on that date. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable Cause Determination and Effect. --

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)

(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 812.

(B) Such charge--

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under section 810(a).

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 814, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of Copies of Charge. -- After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 812(a) and the effect of such an election, to be served--

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

Sec. 811. [42 U.S.C. 3611] Subpoenas; Giving of Evidence

(a) In General. -- The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this title. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

(b) Witness Fees. -- Witnesses summoned by a subpoena under this title shall be entitled to same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

(c) Criminal Penalties. --

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a), shall be fined not more than $100,000 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under

this title--

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a);

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than $100,000 or imprisoned not more than one year, or both.

Sec. 812. [42 U.S.C. 3612] Enforcement by Secretary

(a) Election of Judicial Determination. -- When a charge is filed under section 810, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) in lieu of a hearing under subsection (b). The election must be made not later than 20 days after the receipt by the electing person of service under section 810(h) or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative Law Judge Hearing in Absence of Election. -- If an election is not made under subsection (a) with respect to a charge filed under section 810, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 810. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5, United States Code. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of Parties. -- At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 811. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(d) Expedited Discovery and Hearing. --

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Secretary shall, not later than 180 days after the date of enactment of this

subsection, issue rules to implement this subsection.

(e) Resolution of Charge. -- Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of Trial of Civil Action on Administrative Proceedings. -- An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, Findings and Conclusions, and Order. -- (

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent--

(A) in an amount not exceeding $11,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) in an amount not exceeding $27,500 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding $55,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this title.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)--

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

(h) Review by Secretary; Service of Final Order. --

(1) The Secretary may review any finding, conclusion, or order issued under subsection (g). Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial Review. --

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28, United States Code.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) Court Enforcement of Administrative Order Upon Petition by Secretary. --

(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent

resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) Relief Which May Be Granted. --

(1) Upon the filing of a petition under subsection (i) or (j), the court may--

(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(l) Enforcement Decree in Absence of Petition for Review. -- If no petition for review is filed under subsection (i) before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement--

(1) which is filed by the Secretary under subsection (j) after the end of such day; or

(2) under subsection (m).

(m) Court Enforcement of Administrative Order Upon Petition of Any Person Entitled to Relief. -- If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i), and the Secretary has not sought enforcement of the order under subsection (j), any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) Entry of Decree. -- The clerk of the court of appeals in which a petition for enforcement is filed under subsection (1) or (m) shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(o) Civil Action for Enforcement When Election Is Made for Such Civil Action. --

(1) If an election is made under subsection (a), the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28, United States Code.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 813. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 813 shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's Fees. -- In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section 812, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5, United States Code, or by section 2412 of title 28, United States Code.

Sec. 813. [42 U.S.C. 3613] Enforcement by Private Persons

(a) Civil Action. --

(1)

(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the

terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this title with respect to such charge.

(b) Appointment of Attorney by Court. -- Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may--

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief Which May Be Granted. --

(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on Certain Sales, Encumbrances, and Rentals. -- Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this title.

(e) Intervention by Attorney General. -- Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 814(e) in a civil action to which such section applies.

Sec. 814. [42 U.S.C. 3614] Enforcement by the Attorney General

(a) Pattern or Practice Cases. -- Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On Referral of Discriminatory Housing Practice or Conciliation Agreement for Enforcement. --

(1)

(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 810(g).

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)

(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 810(c).

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 810(c).

(c) Enforcement of Subpoenas. -- The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this title, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief Which May Be Granted in Civil Actions Under Subsections (a) and (b). --

(1) In a civil action under subsection (a) or (b), the court--

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent--

(i) in an amount not exceeding $55,000, for a first violation; and

(ii) in an amount not exceeding $110,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28, United States Code.

(e) Intervention in Civil Actions. -- Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a

conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 813.

Sec. 814a. Incentives for Self-Testing and Self-Correction

(a) Privileged Information. --

(1) Conditions For Privilege. -- A report or result of a self-test (as that term is defined by regulation of the Secretary) shall be considered to be privileged under paragraph (2) if any person-

(A) conducts, or authorizes an independent third party to conduct, a self- test of any aspect of a residential real estate related lending transaction of that person, or any part of that transaction, in order to determine the level or effectiveness of compliance with this title by that person; and

(B) has identified any possible violation of this title by that person and has taken, or is taking, appropriate corrective action to address any such possible violation.

(2) Privileged Self-Test. -- If a person meets the conditions specified in subparagraphs (A) and (B) of paragraph (1) with respect to a self-test described in that paragraph, any report or results of that self-test-

(A) shall be privileged; and

(B) may not be obtained or used by any applicant, department, or agency in any --

(i) proceeding or civil action in which one or more violations of this title are alleged; or

(ii) examination or investigation relating to compliance with this title.

(b) Results of Self-Testing. --

(1) In General. -- No provision of this section may be construed to prevent an aggrieved person, complainant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a violation of this title is alleged, or in any examination or investigation of compliance with this title if --

(A) the person to whom the self-test relates or any person with lawful access to the report or the results --

(i) voluntarily releases or discloses all, or any part of, the report or results to the aggrieved person, complainant, department, or agency, or to the general public; or

(ii) refers to or describes the report or results as a defense to charges of violations of this title against the person to whom the self-test relates; or

(B) the report or results are sought in conjunction with an adjudication or admission of a violation of this title for the sole purpose of determining an appropriate penalty or remedy.

(2) Disclosure for Determination of Penalty or Remedy. -- Any report or results of a self-test that are disclosed for the purpose specified in paragraph (1)(B) --

(A) shall be used only for the particular proceeding in which the adjudication or admission referred to in paragraph (1)(B) is made; and

(B) may not be used in any other action or proceeding.

(c) Adjudication. -- An aggrieved person, complainant, department, or agency that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in --

(1) a court of competent jurisdiction; or

(2) an administrative law proceeding with appropriate jurisdiction.

(2) Regulations. --

(A) In General. -- Not later than 6 months after the date of enactment of this Act, in consultation with the Board and after providing notice and an opportunity for public comment, the Secretary of Housing and Urban Development shall prescribe final regulations to implement section 814A of the Fair Housing Act, as added by this section.

(B) Self-Test. --

(i) Definition. -- The regulations prescribed by the Secretary under subparagraph (A) shall include a definition of the term "self-test" for purposes of section 814A of the Fair Housing Act, as added by this section.

(ii) Requirement for Self-Test. -- The regulations prescribed by the Secretary under subparagraph (A) shall specify that a self-test shall be sufficiently extensive to constitute a determination of the level and effectiveness of the compliance by a person engaged in residential real estate related lending activities with the Fair Housing Act.

(iii) Substantial Similarity to Certain Equal Credit Opportunity Act Regulations. -- The regulations prescribed under subparagraph (A) shall be substantially similar to the regulations prescribed by the Board to carry out section 704A of the Equal Credit Opportunity Act, as added by this section.

(C) Applicability. --

(1) In General. -- Except as provided in paragraph (2), the privilege provided for in section 704a of the Equal Credit Opportunity Act or section 814a of the Fair Housing Act (as those sections are added by this section) shall apply to a

self-test (as that term is defined pursuant to the regulations prescribed under subsection (a)(2) or (b)(2) of this section, as appropriate) conducted before, on, or after the effective date of the regulations prescribed under subsection (a)(2) or (b)(2), as appropriate.

(2) Exception. -- The privilege referred to in paragraph (1) does not apply to such a self-test conducted before the effective date of the regulations prescribed under subsection (a) or (b), as appropriate, if --

(A) before that effective date, a complaint against the creditor or person engaged in residential real estate related lending activities (as the case may be) was --

(i) formally filed in any court of competent jurisdiction; or

(ii) the subject of an ongoing administrative law proceeding;

(B) in the case of section 704a of the Equal Credit Opportunity Act, the creditor has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section; or

(C) in the case of section 814a of the Fair Housing Act, the person engaged in residential real estate related lending activities has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section.

Sec. 815. [42 U.S.C. 3614a] Rules to Implement Title

The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.

Sec. 816. [42 U.S.C. 3615] Effect on State laws

Nothing in this subchapter shall be constructed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

Sec. 817. [42 U.S.C. 3616] Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in

Federal Register

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Sec. 818. [42 U.S.C. 3617] Interference, coercion, or intimidation; enforcement by civil action

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title.

Sec. 819. [42 U.S.C. 3618] Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

Sec. 820. [42 U.S.C. 3619] Separability of provisions

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Sec. 12 of 1988 Act). [42 U.S.C. 3601 note] Disclaimer of Preemptive Effect on Other Acts

Nothing in the Fair Housing Act as amended by this Act limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended.

(Sec. 13 of 1988 Act). [42 U.S.C. 3601 note] Effective Date and Initial Rulemaking

(a) Effective Date. -- This Act and the amendments made by this Act shall take effect on the 180th day beginning after the date of the enactment of this Act.

(b) Initial Rulemaking. -- In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act, issue rules to implement title VIII as amended by this Act. The Secretary shall give public notice and opportunity for comment with respect to such rules.

(Sec. 14 of 1988 Act). [42 U.S.C. 3601 note] Separability of Provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Section 901. (Title IX As Amended) [42 U.S.C. 3631] Violations; bodily injury; death; penalties

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with--

(a) any person because of his race, color, religion, sex, handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin and because he is or has been selling, purchasing, renting, financing occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from--

(1) participating, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin, in any of the activities, services, organizations or facilities described in subsection(a) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act), or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate--

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

TOWN OF OXFORD

ADA NOTICE

The Town of Oxford does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services, or activities. The Town of Oxford does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided by Title II of the Americans with Disabilities Act of 1990.

Questions, concerns, complaints, or requests for additional information regarding the ADA may be forwarded to Kathleen O'Neil designated ADA Compliance Coordinator.

Name: Kathleen O'Neil

Title: ADA Compliance Coordinator

Office Address: 486 Oxford Road
Oxford, CT 06478

Phone Number: (203) 888-2543 x3067

Email Address: grantadmin@oxford-ct.gov

Days/Hours Available: Monday through Thursday from 9:00 a.m. to 5:00 p.m.

Individuals who need auxiliary aids for effective communication in programs and services of the Town of Oxford are invited to make their needs and preferences known to the ADA Compliance Coordinator.

This notice is available upon request in large print, on audio tape, and in Braille, from the ADA Compliance Coordinator.

TOWN OF OXFORD
MaryAnn Drayton-Rogers
First Selectman

S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
Phone: (203) 888-2543 ext. 3012 Fax: (203) 888-2136
E-mail: selectmen@oxford-ct.gov

Office of the First Selectman

AFFIRMATIVE ACTION POLICY STATEMENT

As First Selectman of the Town of Oxford, I recognize the need for Affirmative Action and I pledge my commitment to undertake positive actions to overcome the present effects of past practices or barriers to equal employment opportunity and to achieve the full and fair participation of minorities, women, people with disabilities, older persons, and all other protected groups found to be underutilized in the Town of Oxford's work force or affected by policies having an adverse impact. In the spirit of Executive Order 11, signed by Governor Ella Grasso November 32, 1975, and Executive Order 9 signed by Governor William A. O'Neill on January 3, 1984, I further state that this Town of Oxford will comply with the anti-discrimination provisions of the State and Federal laws and regulations listed at the end of this section.

I recognize the hiring difficulties experienced by minorities, people with disabilities and by many older persons and, where appropriate, I have set goals to overcome the present effects of past discrimination, if any, to achieve the full and fair utilization of such persons in the work force. I further pledge that the Town of Oxford will affirmatively provide services and programs in a fair and impartial manner.

Where adverse impact is identified, the Town of Oxford will: (1) review its personnel policies and procedures to ensure that barriers, which unnecessarily exclude protected classes and practices, which have an illegal discriminatory impact, are identified and eliminated; (2) explore alternative approaches to employ minorities and members of protected classes; (3) administer all terms, conditions, privileges and benefits of the employment process in an equitable manner; and (4) establish procedures for the extra effort that may be necessary to ensure that the recruitment and hiring of protected group members reflect their availability in the job market.

It is the policy of the Town of Oxford to provide equal employment opportunities without consideration of race, color, religion, age, sex, marital status, national origin, genetic information , past/present history of mental disability, ancestry, mental retardation, learning or physical disabilities including but, not limited to blindness, sexual orientation, political belief or criminal record, unless the provisions of Section 46a-60(b), 46a-80(b) and 46a-81(b) of the Connecticut General Statutes are controlling or there is a bonafide occupational qualification excluding persons in one of the above protected groups. This policy applies to all aspects of the employer/employee relationship including, but not limited to, recruitment, hiring, referrals, classifying, advertising, training, upgrading, promotion, benefits, compensation, discipline, layoff and terminations.

The Town of Oxford will implement, monitor and enforce this Affirmative Action Policy Statement in conjunction with the applicable federal and state laws, regulations, executive orders listed below: 13th, 14th and 15th Amendments of the United States Constitution, Civil Rights Act of 1866, 1870,1871, Equal Pay Act of 1963, Title VI and VII of the 1964 United States Civil Rights Act, presidential Executive Orders 11246 amended by 11375, (Nondiscrimination under federal contracts), Act 1 Section 1 and 20 of the Connecticut Constitution, Governor Grasso's Executive Order Number 11, Governor O'Neill Executive Order Number 9, the Connecticut Fair Employment Practices Law (46a-63-64). Discrimination against Criminal Offenders (46a-80). Connecticut General Statutes, Connecticut Code of Fair Accommodations Law (46-63-64), definition of Blind (46a-51), definition of Physically Disabled (46a-51 (15), definition of Mentally Retarded (46a-51 (13), cooperation with the Commission of Human Rights AND Opportunities (46a-77), Sexual Harassment (46-60-(a) Connecticut Credit Discrimination Law (360436 through 439), Title 1 of the State and the Local Fiscal Assistance Act of 1972 and the Americans with Disabilities Act of 1992.

This policy statement will be given annually to all Town of Oxford employees and will also be posted through the Town of Oxford. I also expect each supplier, union, consultant and other entity (s) with which we do business to comply with all applicable State and Federal Equal Opportunity laws and regulations. The Town of Oxford will not knowingly do business with any entity debarred from participation in any federal or state program or found to be in violation of any state or federal anti-discrimination law.

I have assigned the responsibility to achieve the successful implementation of our goals and objectives to Kathleen O'Neil, Oxford Grant Administrator/Writer, (203) 888-2543 x3067.

4/17/08
Date

Mary Ann Drayton-Rogers
Oxford First Selectman

MUNICIPAL GRIEVANCE PROCEDURE

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, programs, or benefits by the Town of Oxford.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint will be available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his designee as soon as possible but no later than 60 calendar days after the alleged violation to:

Kathleen O'Neil
ADA COMPLIANCE COORDINATOR
486 Oxford Road
Oxford, CT 06478
(203) 888-2543 X3067
grantadmin@oxford-ct.gov

Within 15 calendar days after receipt of the conplaint, Kathleen O'Neil will meet with the complainant to discuss the complaint and possible solutions. Within 15 calendar days after the meeting, Kathleen O'Neil will respond in writing, and where appropriate in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the Town of Oxford and after options for substantive resolution of the complaint.

If the response by Kathleen O'Neil does is not satisfactorily resolve the issue, the complaint and/or his/her designee may appeal the decision of the ADA coordinator within 15 calendar days after receipt of the response to the First Selectman or her designee.

Within 15 calendar days after the receipt of the appeal, the First Selectman or her designee will meet the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting with the First Selectman or her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by Kathleen O'Neil, appeals to the First Selectman or her designee, and responses from the ADA coordinator and First Selectman or her designee will be kept by the Town of Oxford for at least three years.

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR PART 35

[Order No.]

Nondiscrimination on the Basis of Disability in State and Local Government Services

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule implements subtitle A of title II of the Americans with Disabilities Act, Pub. L. 101-336, which prohibits discrimination on the basis of disability by public entities. Subtitle A protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability from titles I, III, and V of the Americans with Disabilities Act. This rule, therefore, adopts the general prohibitions of discrimination established under section 504, as well as the requirements for making programs accessible to individuals with disabilities and for providing equally effective communications. It also sets forth standards for what constitutes discrimination on the basis of mental or physical disability, provides a definition of disability and qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination.

EFFECTIVE DATE: January 26, 1992.

FOR FURTHER INFORMATION CONTACT:

Barbara S. Drake, Deputy Assistant Attorney General, Civil Rights Division; Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division; John L. Wodatch, Director, Office on the Americans with Disabilities Act, Civil Rights Division; all of the U.S. Department of Justice, Washington, D.C. 20530. These individuals may be contacted through the Division's ADA Information Line at (202) 514-0301 (Voice), (202) 514-0381 (TDD), or (202) 514- 0383 (TDD). These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background.

The landmark Americans with Disabilities Act ("ADA" or "the Act"), enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.

This regulation implements subtitle A of title II of the ADA, which applies to State and local governments. Most programs and activities of State and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by

section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) ("section 504"), which prohibits discrimination on the basis of handicap in federally assisted programs and activities. Because title II of the ADA essentially extends the nondiscrimination mandate of section 504 to those State and local governments that do not receive Federal financial assistance, this rule hews closely to the provisions of existing section 504 regulations. This approach is also based on section 204 of the ADA, which provides that the regulations issued by the Attorney General to implement title II shall be consistent with the ADA and with the Department of Health, Education, and Welfare's coordination regulation, now codified at 28 CFR Part 41, and, with respect to "program accessibility, existing facilities," and "communications," with the Department of Justice's regulation for its federally conducted programs and activities, codified at 28 CFR Part 39.

The first regulation implementing section 504 was issued in 1977 by the Department of Health, Education, and Welfare (HEW) for the programs and activities to which it provided Federal financial assistance. The following year, pursuant to Executive Order 11914, HEW issued its coordination regulation for federally assisted programs, which served as the model for regulations issued by the other Federal agencies that administer grant programs. HEW's coordination authority, and the coordination regulation issued under that authority, were transferred to the Department of Justice by Executive Order 12250 in 1980.

In 1978, Congress extended application of section 504 to programs and activities conducted by Federal Executive agencies and the United States Postal Service. Pursuant to Executive Order 12250, the Department of Justice developed a prototype regulation to implement the 1978 amendment for federally conducted programs and activities. More than 80 Federal agencies have now issued final regulations based on that prototype, prohibiting discrimination based on handicap in the programs and activities they conduct.

Despite the large number of regulations implementing section 504 for federally assisted and federally conducted programs and activities, there is very little variation in their substantive requirements, or even in their language. Major portions of this regulation, therefore, are taken directly from the existing regulations.

In addition, section 204(b) of the ADA requires that the Department's regulation implementing subtitle A of title II be consistent with the ADA. Thus, the Department's final regulation includes provisions and concepts from titles I and III of the ADA.

Rulemaking History.

On February 22, 1991, the Department of Justice published a notice of proposed rulemaking (NPRM) implementing title III of the ADA in the *Federal Register*. 56 FR 7452. On February 28, 1991, the Department published a notice of proposed rulemaking implementing subtitle A of title II of the ADA in the *Federal Register*. 56 FR 8538. Each NPRM solicited comments on the definitions, standards, and procedures of the proposed rules. By the April 29, 1991, close of the comment period of the NPRM for title II, the Department had received 2,718 comments. Following the close of the comment period, the Department received an additional 222 comments.

In order to encourage public participation in the development of the Department's rules under the ADA, the Department held four public hearings. Hearings were held in Dallas, Texas on March 4-5, 1991, in Washington, D.C. on March 13-15, 1991, in San Francisco, California on March 18-19, 1991, and in Chicago, Illinois on March 27-28, 1991. At these hearings, 329 persons testified and 1,567 pages of testimony were compiled. Transcripts of the hearings were included in the Department's rulemaking

docket.

The comments that the Department received occupy almost six feet of shelf space and contain over 10,000 pages. The Department received comments from individuals from all fifty States and the District of Columbia. Nearly 75% of the comments that the Department received came from individuals and from organizations representing the interests of persons with disabilities. The Department received 292 comments from entities covered by the ADA and trade associations representing businesses in the private sector, and 67 from government units, such as mayors' offices, public school districts, and various State agencies working with individuals with disabilities.

The Department received one comment from a consortium of 540 organizations representing a broad spectrum of persons with disabilities. In addition, at least another 25 commenters endorsed the position expressed by this consortium, or submitted identical comments on one or both proposed regulations.

An organization representing persons with hearing impairments submitted a large number of comments. This organization presented the Department with 479 individual comments, each providing in chart form a detailed representation of what type of auxiliary aid or service would be useful in the various categories of places of public accommodation.

The Department received a number of comments based on almost ten different form letters. For example, individuals who have a heightened sensitivity to a variety of chemical substances submitted 266 post cards detailing how exposure to various environmental conditions restricts their access to public and commercial buildings. Another large group of form letters came from groups affiliated with independent living centers.

The vast majority of the comments addressed the Department's proposal implementing title III. Slightly more than 100 comments addressed only issues presented in the proposed title II regulation.

The Department read and analyzed each comment that was submitted in a timely fashion. Transcripts of the four hearings were analyzed along with the written comments. The decisions that the Department has made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments, including transcripts of the four hearings, will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, N.W., Washington, D.C. from 10:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays, until August 30, 1991.

Overview of the Rule.

The rule is organized into seven subparts. Subpart A, "General," includes the purpose and application sections, describes the relationship of the Act to other laws, and defines key terms used in the regulation. It also includes administrative requirements adapted from section 504 regulations for self- evaluations, notices, designation of responsible employees, and adoption of grievance procedures by public entities.

Subpart B, "General Requirements," contains the general prohibitions of discrimination based on the Act and the section 504 regulations. It also contains certain "miscellaneous" provisions derived from title V of the Act that involve issues such as retaliation and coercion against those asserting ADA rights, illegal use of drugs, and restrictions on smoking. These provisions are also included in the Department's proposed title III regulation, as is the general provision on maintenance of accessible features.

Subpart C addresses employment by public entities, which is also covered by title I of the Act. Subpart D, which is also based on the section 504 regulations, sets out the requirements for program accessibility in existing facilities and for new construction and alterations. Subpart E contains specific requirements relating to communications.

Subpart F establishes administrative procedures for enforcement of title II. As provided by section 203 of the Act, these are based on the procedures for enforcement of section 504, which, in turn, are based on the enforcement procedures for title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d-4a). Subpart F also restates the provisions of title V of the ADA on attorneys fees, alternative means of dispute resolution, the effect of unavailability of technical assistance, and State immunity.

Subpart G designates the Federal agencies responsible for investigation of complaints under this part. It assigns enforcement responsibility for particular public entities, on the basis of their major functions, to eight Federal agencies that currently have substantial responsibilities for enforcing section 504. It provides that the Department of Justice would have enforcement responsibility for all State and local government entities not specifically assigned to other designated agencies, but that the Department may further assign specific functions to other agencies. The part would not, however, displace the existing enforcement authorities of the Federal funding agencies under section 504.

Regulatory Process Matters.

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12291. The Department is preparing a final regulatory impact analysis (RIA) of this rule and the Architectural and Transportation Barriers Compliance Board is preparing an RIA for its Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) that are incorporated in Appendix A of the Department's final rule implementing title III of the ADA. Draft copies of both preliminary RIAs are available for comment; the Department will provide copies of these documents to the public upon request. Commenters are urged to provide additional information as to the costs and benefits associated with this rule. This will facilitate the development of a final RIA by January 1, 1992.

The Department's RIA will evaluate the economic impact of the final rule. Included among those title II provisions that are likely to result in significant economic impact are the requirements for auxiliary aids, barrier removal in existing facilities, and readily accessible new construction and alterations. An analysis of these costs will be included in the RIA.

The Preliminary RIA prepared for the notice of proposed rulemaking contained all of the available information that would have been included in a preliminary regulatory flexibility analysis, had one been prepared under the Regulatory Flexibility Act, concerning the rule's impact on small entities. The final RIA will contain all of the information that is required in a final regulatory flexibility analysis and will serve as such an analysis. Moreover, the extensive notice and comment procedure followed by the Department in the promulgation of this rule, which included public hearings, dissemination of materials, and provision of speakers to affected groups, clearly provided any interested small entities with the notice and opportunity for comment provided for under the Regulatory Flexibility Act procedures.

The Department is preparing a statement of the federalism impact of the rule under Executive Order 12612 and will provide copies of this statement on request.

The reporting and recordkeeping requirements described in the rule are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR Part 1320. Accordingly, those information collection requirements have been submitted to OMB for review

pursuant to the Paperwork Reduction Act.

SECTION-BY-SECTION ANALYSIS:

Subpart A -- General

{35.101 Purpose.

Section 35.101 states the purpose of the rule, which is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (the Act), which prohibits discrimination on the basis of disability by public entities. This part does not, however, apply to matters within the scope of the authority of the Secretary of Transportation under subtitle B of title II of the Act.

{35.102 Application.

This provision specifies that, except as provided in paragraph (b), the regulation applies to all services, programs, and activities provided or made available by public entities, as that term is defined in {35.104. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in federally assisted programs and activities, already covers those programs and activities of public entities that receive Federal financial assistance. Title II of the ADA extends this prohibition of discrimination to include all services, programs, and activities provided or made available by State and local governments or any of their instrumentalities or agencies, regardless of the receipt of Federal financial assistance. Except as provided in {35.134, this part does not apply to private entities.

The scope of title II's coverage of public entities is comparable to the coverage of Federal Executive agencies under the 1978 amendment to section 504, which extended section 504's application to all programs and activities "conducted by" Federal Executive agencies, in that title II applies to anything a public entity does. Title II coverage, however, is not limited to "Executive" agencies, but includes activities of the legislative and judicial branches of State and local governments. All governmental activities of public entities are covered, even if they are carried out by contractors. For example, a State is obligated by title II to ensure that the services, programs, and activities of a State park inn operated under contract by a private entity are in compliance with title II's requirements. The private entity operating the inn would also be subject to the obligations of public accommodations under title III of the Act and the Department's title III regulations at 28 CFR Part 36.

Aside from employment, which is also covered by title I of the Act, there are two major categories of programs or activities covered by this regulation: those involving general public contact as part of ongoing operations of the entity and those directly administered by the entities for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the entity's facilities. Activities in the second category include programs that provide State or local government services or benefits.

Paragraph (b) of {35.102 explains that to the extent that the public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the Act, they are subject to the regulation of the Department of Transportation (DOT) at 49 CFR Part 37, and are not covered by this part. The Department of Transportation's ADA regulation establishes specific requirements for construction of transportation facilities and acquisition of vehicles. Matters not covered by subtitle B, such as the provision of auxiliary aids, are covered by this rule. For example, activities that are covered by the Department of Transportation's regulation implementing subtitle B are not required to be included in the self-evaluation required by {35.105. In addition, activities not specifically addressed by DOT's

ADA regulation may be covered by DOT's regulation implementing section 504 for its federally assisted programs and activities at 49 CFR Part 27. Like other programs of public entities that are also recipients of Federal financial assistance, those programs would be covered by both the section 504 regulation and this part. Although airports operated by public entities are not subject to DOT's ADA regulation, they are subject to subpart A of title II and to this rule.

Some commenters asked for clarification about the responsibilities of public school systems under section 504 and the ADA with respect to programs, services, and activities that are not covered by the Individuals with Disabilities Education Act (IDEA), including, for example, programs open to parents or to the public, graduation ceremonies, parent-teacher organization meetings, plays and other events open to the public, and adult education classes. Public school systems must comply with the ADA in all of their services, programs, or activities, including those that are open to parents or to the public. For instance, public school systems must provide program accessibility to parents and guardians with disabilities to these programs, activities, or services, and appropriate auxiliary aids and services whenever necessary to ensure effective communication, as long as the provision of the auxiliary aids results neither in an undue burden or in a fundamental alteration of the program.

{35.103 Relationship to other laws.

Section 35.103 is derived from sections 501(a) and (b) of the ADA. Paragraph (a) of this section provides that, except as otherwise specifically provided by this part, title II of the ADA is not intended to apply lesser standards than are required under title V of the Rehabilitation Act of 1973, as amended (29 U.S.C. 790-94), or the regulations implementing that title. The standards of title V of the Rehabilitation Act apply for purposes of the ADA to the extent that the ADA has not explicitly adopted a different standard than title V. Because title II of the ADA essentially extends the antidiscrimination prohibition embodied in section 504 to all actions of State and local governments, the standards adopted in this part are generally the same as those required under section 504 for federally assisted programs. Title II, however, also incorporates those provisions of titles I and III of the ADA that are not inconsistent with the regulations implementing section 504. Judiciary Committee report, H.R. Rep. No. 485, 101st Cong., 2d Sess., pt.3, at 51 (1990) [hereinafter "Judiciary report"]; Education and Labor Committee report, H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 84 (1990) [hereinafter "Education and Labor report"]. Therefore, this part also includes appropriate provisions derived from the regulations implementing those titles. The inclusion of specific language in this part, however, should not be interpreted as an indication that a requirement is not included under a regulation implementing section 504.

Paragraph (b) makes clear that Congress did not intend to displace any of the rights or remedies provided by other Federal laws (including section 504) or other State laws (including State common law) that provide greater or equal protection to individuals with disabilities. As discussed above, the standards adopted by title II of the ADA for State and local government services are generally the same as those required under section 504 for federally assisted programs and activities. Subpart F of the regulation establishes compliance procedures for processing complaints covered by both this part and section 504.

With respect to State law, a plaintiff may choose to pursue claims under a State law that does not confer greater substantive rights, or even confers fewer substantive rights, if the alleged violation is protected under the alternative law and the remedies are greater. For example, a person with a physical disability could seek damages under a State law that allows compensatory and punitive damages for discrimination on the basis of physical disability, but not on the basis of mental disability. In that situation, the State law would provide narrower coverage, by excluding mental disabilities, but broader remedies, and an individual covered by both laws could choose to bring an action under both laws.

Moreover, State tort claims confer greater remedies and are not preempted by the ADA. A plaintiff may join a State tort claim to a case brought under the ADA. In such a case, the plaintiff must, of course, prove all the elements of the State tort claim in order to prevail under that cause of action.

{35.104 Definitions.

"Act." The word "Act" is used in this part to refer to the Americans with Disabilities Act of 1990, Pub. L. 101-336, which is also referred to as the "ADA."

"Assistant Attorney General." The term "Assistant Attorney General" refers to the Assistant Attorney General of the Civil Rights Division of the Department of Justice.

"Auxiliary aids and services." Auxiliary aids and services include a wide range of services and devices for ensuring effective communication. The proposed definition in {35.104 provided a list of examples of auxiliary aids and services that was taken from the definition of auxiliary aids and services in section 3 (1) of the ADA and was supplemented by examples from regulations implementing section 504 in federally conducted programs (see 28 CFR 39.103).

A substantial number of commenters suggested that additional examples be added to this list. The Department has added several items to this list but wishes to clarify that the list is not an all-inclusive or exhaustive catalogue of possible or available auxiliary aids or services. It is not possible to provide an exhaustive list, and an attempt to do so would omit the new devices that will become available with emerging technology.

Subparagraph (1) lists several examples, which would be considered auxiliary aids and services to make aurally delivered materials available to individuals with hearing impairments. The Department has changed the phrase used in the proposed rules, "orally delivered materials," to the statutory phrase, "aurally delivered materials," to track section 3 of the ADA and to include non-verbal sounds and alarms, and computer generated speech.

The Department has added videotext displays, transcription services, and closed and open captioning to the list of examples. Videotext displays have become an important means of accessing auditory communications through a public address system. Transcription services are used to relay aurally delivered material almost simultaneously in written form to persons who are deaf or hearing-impaired. This technology is often used at conferences, conventions, and hearings. While the proposed rule expressly included television decoder equipment as an auxiliary aid or service, it did not mention captioning itself. The final rule rectifies this omission by mentioning both closed and open captioning.

Several persons and organizations requested that the Department replace the term "telecommunications devices for deaf persons" or "TDD's" with the term "text telephone." The Department has declined to do so. The Department is aware that the Architectural and Transportation Barriers Compliance Board (ATBCB) has used the phrase "text telephone" in lieu of the statutory term "TDD" in its final accessibility guidelines. Title IV of the ADA, however, uses the term "Telecommunications Device for the Deaf" and the Department believes it would be inappropriate to abandon this statutory term at this time.

Several commenters urged the Department to include in the definition of "auxiliary aids and services" devices that are now available or that may become available with emerging technology. The Department declines to do so in the rule. The Department, however, emphasizes that, although the definition would include "state of the art" devices, public entities are not required to use the newest or most advanced

technologies as long as the auxiliary aid or service that is selected affords effective communication.

Subparagraph (2) lists examples of aids and services for making visually delivered materials accessible to persons with visual impairments. Many commenters proposed additional examples, such as signage or mapping, audio description services, secondary auditory programs, telebraillers, and reading machines. While the Department declines to add these items to the list, they are auxiliary aids and services and may be appropriate depending on the circumstances.

Subparagraph (3) refers to acquisition or modification of equipment or devices. Several commenters suggested the addition of current technological innovations in microelectronics and computerized control systems (e.g., voice recognition systems, automatic dialing telephones, and infrared elevator and light control systems) to the list of auxiliary aids. The Department interprets auxiliary aids and services as those aids and services designed to provide effective communications, i.e., making aurally and visually delivered information available to persons with hearing, speech, and vision impairments. Methods of making services, programs, or activities accessible to, or usable by, individuals with mobility or manual dexterity impairments are addressed by other sections of this part, including the provision for modifications in policies, practices, or procedures ({35.130(b)(7)).

Paragraph (b)(4) deals with other similar services and actions. Several commenters asked for clarification that "similar services and actions" include retrieving items from shelves, assistance in reaching a marginally accessible seat, pushing a barrier aside in order to provide an accessible route, or assistance in removing a sweater or coat. While retrieving an item from a shelf might be an "auxiliary aid or service" for a blind person who could not locate the item without assistance, it might be a method of providing program access for a person using a wheelchair who could not reach the shelf, or a reasonable modification to a self-service policy for an individual who lacked the ability to grasp the item. As explained above, auxiliary aids and services are those aids and services required to provide effective communications. Other forms of assistance are more appropriately addressed by other provisions of the final rule.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Federal agency designated under subpart G as responsible for investigation of a complaint to initiate its investigation.

"Current illegal use of drugs." The phrase "current illegal use of drugs" is used in {35.131. Its meaning is discussed in the preamble for that section.

"Designated agency." The term "designated agency" is used to refer to the Federal agency designated under subpart G of this rule as responsible for carrying out the administrative enforcement responsibilities established by subpart F of the rule.

"Disability." The definition of the term "disability" is the same as the definition in the title III regulation codified at 28 CFR Part 36. It is comparable to the definition of the term "individual with handicaps" in section 7(8) of the Rehabilitation Act and section 802(h) of the Fair Housing Act. The Education and Labor Committee report makes clear that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare (HEW) in its regulations implementing section 504 (42 FR 22685 (May 4, 1977)) and the analysis by the Department of Housing and Urban Development in its regulation implementing the Fair Housing Amendments Act of 1988 (54 FR 3232 (Jan. 23, 1989)) should also apply fully to the term "disability" (Education and Labor report at 50).

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead

of "individual with handicaps" represents an effort by Congress to make use of up-to-date, currently accepted terminology. As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities, and organizations representing such individuals, object to the use of such terms as "handicapped person" or "the handicapped." In other recent legislation, Congress also recognized this shift in terminology, e.g., by changing the name of the National Council on the Handicapped to the National Council on Disability (Pub. L. 100- 630).

In enacting the Americans with Disabilities Act, Congress concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should one be attributed to this change in phraseology.

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

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

(B) A record of such an impairment; or

(C) Being regarded as having such an impairment.

If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the Americans with Disabilities Act.

Congress adopted this same basic definition of "disability," first used in the Rehabilitation Act of 1973 and in the Fair Housing Amendments Act of 1988, for a number of reasons. First, it has worked well since it was adopted in 1974. Second, it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities, especially because new disorders may be recognized in the future, as they have since the definition was first established in 1974.

Test A -- A physical or mental impairment that substantially limits one or more of the major life activities of such individual

Physical or mental impairment. Under the first test, an individual must have a physical or mental impairment. As explained in paragraph (1)(i) of the definition, "impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs (which would include speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.); respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This list closely tracks the one used in the regulations for section 504 of the Rehabilitation Act of 1973 (see, *e.g.*, 45 CFR 84.3(j)(2)(i)).

Many commenters asked that "traumatic brain injury" be added to the list in paragraph (1)(i). Traumatic brain injury is already included because it is a physiological condition affecting one of the listed body systems, i.e., "neurological." Therefore, it was unnecessary to add the term to the regulation, which only provides representative examples of physiological disorders.

It is not possible to include a list of all the specific conditions, contagious and noncontagious diseases,

or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that other conditions or disorders may be identified in the future. However, the list of examples in paragraph (1)(ii) of the definition includes: orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase "symptomatic or asymptomatic" was inserted in the final rule after "HIV disease" in response to commenters who suggested the clarification was necessary.

The examples of "physical or mental impairments" in paragraph (1)(ii) are the same as those contained in many section 504 regulations, except for the addition of the phrase "contagious and noncontagious" to describe the types of diseases and conditions included, and the addition of "HIV disease (symptomatic or asymptomatic)" and "tuberculosis" to the list of examples. These additions are based on the committee reports, caselaw, and official legal opinions interpreting section 504. In *School Board of Nassau County v. Arline, 480 U.S. 273 (1987)*, a case involving an individual with tuberculosis, the Supreme Court held that people with contagious diseases are entitled to the protections afforded by section 504. Following the *Arline* decision, this Department's Office of Legal Counsel issued a legal opinion that concluded that symptomatic HIV disease is an impairment that substantially limits a major life activity; therefore it has been included in the definition of disability under this part. The opinion also concluded that asymptomatic HIV disease is an impairment that substantially limits a major life activity, either because of its actual effect on the individual with HIV disease or because the reactions of other people to individuals with HIV disease cause such individuals to be treated as though they are disabled. *See* Memorandum from Douglas W. Kmiec, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, to Arthur B. Culvahouse, Jr., Counsel to the President (Sept. 27, 1988), reprinted in Hearings on S. 933, the Americans with Disabilities Act, Before the Subcomm. on the Handicapped of the Senate Comm. on Labor and Human Resources, 101st. Cong., 1st Sess. 346 (1989).

Paragraph (1)(iii) states that the phrase "physical or mental impairment" does not include homosexuality or bisexuality. These conditions were never considered impairments under other Federal disability laws. Section 511(a) of the statute makes clear that they are likewise not to be considered impairments under the Americans with Disabilities Act.

Physical or mental impairment does not include simple physical characteristics, such as blue eyes or black hair. Nor does it include environmental, cultural, economic, or other disadvantages, such as having a prison record, or being poor. Nor is age a disability. Similarly, the definition does not include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. However, a person who has these characteristics and also has a physical or mental impairment may be considered as having a disability for purposes of the Americans with Disabilities Act based on the impairment.

Substantial limitation of a major life activity. Under Test A, the impairment must be one that "substantially limits a major life activity." Major life activities include such things as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

For example, a person who is paraplegic is substantially limited in the major life activity of walking, a person who is blind is substantially limited in the major life activity of seeing, and a person who is mentally retarded is substantially limited in the major life activity of learning. A person with traumatic brain injury is substantially limited in the major life activities of caring for one's self, learning, and working because of memory deficit, confusion, contextual difficulties, and inability to reason appropriately.

A person is considered an individual with a disability for purposes of Test A, the first prong of the definition, when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person with a minor, trivial impairment, such as a simple infected finger, is not impaired in a major life activity. A person who can walk for 10 miles continuously is not substantially limited in walking merely because, on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

The Department received many comments on the proposed rule's inclusion of the word "temporary" in the definition of "disability." The preamble indicated that impairments are not necessarily excluded from the definition of "disability" simply because they are temporary, but that the duration, or expected duration, of an impairment is one factor that may properly be considered in determining whether the impairment substantially limits a major life activity. The preamble recognized, however, that temporary impairments, such as a broken leg, are not commonly regarded as disabilities, and only in rare circumstances would the degree of the limitation and its expected duration be substantial. Nevertheless, many commenters objected to inclusion of the word "temporary" both because it is not in the statute and because it is not contained in the definition of "disability" set forth in the title I regulations of the Equal Employment Opportunity Commission (EEOC). The word "temporary" has been deleted from the final rule to conform with the statutory language.

The question of whether a temporary impairment is a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

The question of whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable modifications or auxiliary aids and services. For example, a person with hearing loss is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, that substantially limit a major life activity, are covered under the first prong of the definition of disability, even if the effects of the impairment are controlled by medication.

Many commenters asked that environmental illness (also known as multiple chemical sensitivity) as well as allergy to cigarette smoke be recognized as disabilities. The Department, however, declines to state categorically that these types of allergies or sensitivities are disabilities, because the determination as to whether an impairment is a disability depends on whether, given the particular circumstances at issue, the impairment substantially limits one or more major life activities (or has a history of, or is regarded as having such an effect).

Sometimes respiratory or neurological functioning is so severely affected that an individual will satisfy the requirements to be considered disabled under the regulation. Such an individual would be entitled to all of the protections afforded by the Act and this part. In other cases, individuals may be sensitive to environmental elements or to smoke but their sensitivity will not rise to the level needed to constitute a disability. For example, their major life activity of breathing may be somewhat, but not substantially, impaired. In such circumstances, the individuals are not disabled and are not entitled to the protections of the statute despite their sensitivity to environmental agents.

In sum, the determination as to whether allergies to cigarette smoke, or allergies or sensitivities characterized by the commenters as environmental illness are disabilities covered by the regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments. Moreover, the addition of specific regulatory provisions relating to environmental illness in the final rule would be inappropriate at this time pending future consideration of the issue by the Architectural and

Transportation Barriers Compliance Board, the Environmental Protection Agency, and the Occupational Safety and Health Administration of the Department of Labor.

Test B -- A record of such an impairment

This test is intended to cover those who have a record of an impairment. As explained in paragraph (3) of the rule's definition of disability, this includes a person who has a history of an impairment that substantially limited a major life activity, such as someone who has recovered from an impairment. It also includes persons who have been misclassified as having an impairment.

This provision is included in the definition in part to protect individuals who have recovered from a physical or mental impairment that previously substantially limited them in a major life activity. Discrimination on the basis of such a past impairment is prohibited. Frequently occurring examples of the first group (those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (those who have been misclassified as having an impairment) are persons who have been misclassified as having mental retardation or mental illness.

Test C -- Being regarded as having such an impairment

This test, as contained in paragraph (4) of the definition, is intended to cover persons who are treated by a public entity as having a physical or mental impairment that substantially limits a major life activity. It applies when a person is treated as if he or she has an impairment that substantially limits a major life activity, regardless of whether that person has an impairment.

The Americans with Disabilities Act uses the same "regarded as" test set forth in the regulations implementing section 504 of the Rehabilitation Act. *See, e.g.*, 28 CFR 42.540(k)(2)(iv), which provides:

> (iv) "Is regarded as having an impairment" means (A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) 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 (C) Has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

The perception of the covered entity is a key element of this test. A person who perceives himself or herself to have an impairment, but does not have an impairment, and is not treated as if he or she has an impairment, is not protected under this test.

A person would be covered under this test if a public entity refused to serve the person because it perceived that the person had an impairment that limited his or her enjoyment of the goods or services being offered.

For example, persons with severe burns often encounter discrimination in community activities, resulting in substantial limitation of major life activities. These persons would be covered under this test based on the attitudes of others towards the impairment, even if they did not view themselves as "impaired."

The rationale for this third test, as used in the Rehabilitation Act of 1973, was articulated by the Supreme Court in *Arline*, 480 U.S. 273 (1987). The Court noted that although an individual may have an

impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." *Id.* at 283. The Court concluded that, by including this test in the Rehabilitation Act's definition, "Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment." *Id.* at 284.

Thus, a person who is denied services or benefits by a public entity because of myths, fears, and stereotypes associated with disabilities would be covered under this third test whether or not the person's physical or mental condition would be considered a disability under the first or second test in the definition.

If a person is refused admittance on the basis of an actual or perceived physical or mental condition, and the public entity can articulate no legitimate reason for the refusal (such as failure to meet eligibility criteria), a perceived concern about admitting persons with disabilities could be inferred and the individual would qualify for coverage under the "regarded as" test. A person who is covered because of being regarded as having an impairment is not required to show that the public entity's perception is inaccurate (e.g., that he will be accepted by others) in order to receive benefits from the public entity.

Paragraph (5) of the definition lists certain conditions that are not included within the definition of "disability." The excluded conditions are: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs. Unlike homosexuality and bisexuality, which are not considered impairments under either section 504 or the Americans with Disabilities Act (see the definition of "disability," paragraph (1)(iv)), the conditions listed in paragraph (5), except for transvestism, are not necessarily excluded as impairments under section 504. (Transvestism was excluded from the definition of disability for section 504 by the Fair Housing Amendments Act of 1988, Pub. L. 100-430, section 6(b)).

"Drug." The definition of the term "drug" is taken from section 510(d)(2) of the ADA.

"Facility." "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. It includes both indoor and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

Commenters raised questions about the applicability of this part to activities operated in mobile facilities, such as bookmobiles or mobile health screening units. Such activities would be covered by the requirement for program accessibility in {35.150, and would be included in the definition of "facility" as "other real or personal property," although standards for new construction and alterations of such facilities are not yet included in the accessibility standards adopted by {35.151. Sections 35.150 and 35.151 specifically address the obligations of public entities to ensure accessibility by providing curb ramps at pedestrian walkways.

"Historic preservation programs" and "Historic properties" are defined in order to aid in the interpretation of {{35.150(a)(2) and (b)(2), which relate to accessibility of historic preservation programs, and {35.151(d), which relates to the alteration of historic properties.

"Illegal use of drugs." The definition of "illegal use of drugs" is taken from section 510(d)(1) of the Act and clarifies that the term includes the illegal use of one or more drugs.

"Individual with a disability" means a person who has a disability but does not include an individual who is currently illegally using drugs, when the public entity acts on the basis of such use. The phrase "current illegal use of drugs" is explained in {35.131.

"Public entity." The term "public entity" is defined in accordance with section 201(1) of the ADA as any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; or the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

"Qualified individual with a disability." The definition of "qualified individual with a disability" is taken from section 201(2) of the Act, which is derived from the definition of "qualified handicapped person" in the Department of Health and Human Services' regulation implementing section 504 (45 CFR {84.3 (k)). It combines the definition at 45 CFR 84.3(k)(1) for employment ("a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question") with the definition for other services at 45 CFR 84.3(k)(4) ("a handicapped person who meets the essential eligibility requirements for the receipt of such services").

Some commenters requested clarification of the term "essential eligibility requirements." Because of the variety of situations in which an individual's qualifications will be at issue, it is not possible to include more specific criteria in the definition. The "essential eligibility requirements" for participation in some activities covered under this part may be minimal. For example, most public entities provide information about their operations as a public service to anyone who requests it. In such situations, the only "eligibility requirement" for receipt of such information would be the request for it. Where such information is provided by telephone, even the ability to use a voice telephone is not an "essential eligibility requirement," because {35.161 requires a public entity to provide equally effective telecommunication systems for individuals with impaired hearing or speech.

For other activities, identification of the "essential eligibility requirements" may be more complex. Where questions of safety are involved, the principles established in {36.208 of the Department's regulation implementing title III of the ADA, to be codified at 28 CFR Part 36, will be applicable. That section implements section 302(b)(3) of the Act, which provides that a public accommodation is not required to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation, if that individual poses a direct threat to the health or safety of others.

A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. In *School Board of Nassau County v. Arline, 480 U.S. 273 (1987)*, the Supreme Court recognized that there is a need to balance the interests of people with disabilities against legitimate concerns for public safety. Although persons with disabilities are generally entitled to the protection of this part, a person who poses a significant risk to others will not be "qualified," if reasonable modifications to the public entity's policies, practices, or procedures will not eliminate that risk.

The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence, to determine: the nature, duration, and severity of the risk; the

probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. This is the test established by the Supreme Court in *Arline*. Such an inquiry is essential if the law is to achieve its goal of protecting disabled individuals from discrimination based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as the need to avoid exposing others to significant health and safety risks. Making this assessment will not usually require the services of a physician. Sources for medical knowledge include guidance from public health authorities, such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes of Health, including the National Institute of Mental Health.

"Qualified interpreter." The Department received substantial comment regarding the lack of a definition of "qualified interpreter." The proposed rule defined auxiliary aids and services to include the statutory term, "qualified interpreters" ({35.104), but did not define it. Section 35.160 requires the use of auxiliary aids including qualified interpreters and commenters stated that a lack of guidance on what the term means would create confusion among those trying to secure interpreting services and often result in less than effective communication.

Many commenters were concerned that, without clear guidance on the issue of "qualified" interpreter, the rule would be interpreted to mean "available, rather than qualified" interpreters. Some claimed that few public entities would understand the difference between a qualified interpreter and a person who simply knows a few signs or how to fingerspell.

In order to clarify what is meant by "qualified interpreter" the Department has added a definition of the term to the final rule. A qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. This definition focuses on the actual ability of the interpreter in a particular interpreting context to facilitate effective communication between the public entity and the individual with disabilities.

Public comment also revealed that public entities have at times asked persons who are deaf to provide family members or friends to interpret. In certain circumstances, notwithstanding that the family member of friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret "effectively, accurately, and impartially."

The definition of "qualified interpreter" in this rule does not invalidate or limit standards for interpreting services of any State or local law that are equal to or more stringent than those imposed by this definition. For instance, the definition would not supersede any requirement of State law for use of a certified interpreter in court proceedings.

"Section 504." The Department added a definition of "section 504" because the term is used extensively in subpart F of this part.

"State." The definition of "State" is identical to the statutory definition in section 3(3) of the ADA.

{35.105 Self-evaluation.

Section 35.105 establishes a requirement, based on the section 504 regulations for federally assisted and federally conducted programs, that a public entity evaluate its current policies and practices to identify

and correct any that are not consistent with the requirements of this part. As noted in the discussion of {35.102, activities covered by the Department of Transportation's regulation implementing subtitle B of title II are not required to be included in the self-evaluation required by this section.

Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with disabilities, which has promoted both effective and efficient implementation of section 504. The Department expects that it will likewise be useful to public entities newly covered by the ADA.

All public entities are required to do a self-evaluation. However, only those that employ 50 or more persons are required to maintain the self- evaluation on file and make it available for public inspection for three years. The number 50 was derived from the Department of Justice's section 504 regulations for federally assisted programs, 28 CFR 42.505(c). The Department received comments critical of this limitation, some suggesting the requirement apply to all public entities and others suggesting that the number be changed from 50 to 15. The final rule has not been changed. Although many regulations implementing section 504 for federally assisted programs do use 15 employees as the cut-off for this record-keeping requirement, the Department believes that it would be inappropriate to extend it to those smaller public entities covered by this regulation that do not receive Federal financial assistance. This approach has the benefit of minimizing paperwork burdens on small entities.

Paragraph (d) provides that the self-evaluation required by this section shall apply only to programs not subject to section 504 or those policies and practices, such as those involving communications access, that have not already been included in a self-evaluation required under an existing regulation implementing section 504. Because most self-evaluations were done from five to twelve years ago, however, the Department expects that a great many public entities will be reexamining all of their policies and programs. Programs and functions may have changed, and actions that were supposed to have been taken to comply with section 504 may not have been fully implemented or may no longer be effective. In addition, there have been statutory amendments to section 504 which have changed the coverage of section 504, particularly the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988), which broadened the definition of a covered "program or activity."

Several commenters suggested that the Department clarify public entities' liability during the one-year period for compliance with the self-evaluation requirement. The self-evaluation requirement does not stay the effective date of the statute nor of this part. Public entities are, therefore, not shielded from discrimination claims during that time.

Other commenters suggested that the rule require that every self-evaluation include an examination of training efforts to assure that individuals with disabilities are not subjected to discrimination because of insensitivity, particularly in the law enforcement area. Although the Department has not added such a specific requirement to the rule, it would be appropriate for public entities to evaluate training efforts because, in many cases, lack of training leads to discriminatory practices, even when the policies in place are nondiscriminatory.

{35.106 Notice.

Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public

places; or the broadcast of information by television or radio. In providing the notice, a public entity must comply with the requirements for effective communication in {35.160. The preamble to that section gives guidance on how to effectively communicate with individuals with disabilities.

{35.107 Designation of responsible employee and adoption of grievance procedures.

Consistent with {35.105, Self-evaluation, the final rule requires that public entities with 50 or more employees designate a responsible employee and adopt grievance procedures. Most of the commenters who suggested that the requirement that self-evaluation be maintained on file for three years not be limited to those employing 50 or more persons made a similar suggestion concerning {35.107. Commenters recommended either that all public entities be subject to section 35.107, or that "50 or more persons" be changed to "15 or more persons." As explained in the discussion of {35.105, the Department has not adopted this suggestion.

The requirement for designation of an employee responsible for coordination of efforts to carry out responsibilities under this part is derived from the HEW regulation implementing section 504 in federally assisted programs. The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act and this part and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities. This paragraph in no way limits a public entity's obligation to ensure that all of its employees comply with the requirements of this part, but it ensures that any failure by individual employees can be promptly corrected by the designated employee.

Section 35.107(b) requires public entities with 50 or more employees to establish grievance procedures for resolving complaints of violations of this part. Similar requirements are found in the section 504 regulations for federally assisted programs (*see, e.g.*, 45 CFR 84.7(b)). The rule, like the regulations for federally assisted programs, provides for investigation and resolution of complaints by a Federal enforcement agency. It is the view of the Department that public entities subject to this part should be required to establish a mechanism for resolution of complaints at the local level without requiring the complainant to resort to the Federal complaint procedures established under subpart F. Complainants would not, however, be required to exhaust the public entity's grievance procedures before filing a complaint under subpart F. Delay in filing the complaint at the Federal level caused by pursuit of the remedies available under the grievance procedure would generally be considered good cause for extending the time allowed for filing under {35.170(b).

Subpart B -- General Requirements

{35.130 General prohibitions against discrimination.

The general prohibitions against discrimination in the rule are generally based on the prohibitions in existing regulations implementing section 504 and, therefore, are already familiar to State and local entities covered by section 504. In addition, {35.130 includes a number of provisions derived from title III of the Act that are implicit to a certain degree in the requirements of regulations implementing section 504.

Several commenters suggested that this part should include the section of the proposed title III regulation that implemented section 309 of the Act, which requires that courses and examinations related to applications, licensing, certification, or credentialing be provided in an accessible place and manner or that alternative accessible arrangements be made. The Department has not adopted this

suggestion. The requirements of this part, including the general prohibitions of discrimination in this section, the program access requirements of subpart D, and the communications requirements of subpart E, apply to courses and examinations provided by public entities. The Department considers these requirements to be sufficient to ensure that courses and examinations administered by public entities meet the requirements of section 309. For example, a public entity offering an examination must ensure that modifications of policies, practices, or procedures or the provision of auxiliary aids and services furnish the individual with a disability an equal opportunity to demonstrate his or her knowledge or ability. Also, any examination specially designed for individuals with disabilities must be offered as often and in as timely a manner as are other examinations. Further, under this part, courses and examinations must be offered in the most integrated setting appropriate. The analysis of {35.130(d) is relevant to this determination.

A number of commenters asked that the regulation be amended to require training of law enforcement personnel to recognize the difference between criminal activity and the effects of seizures or other disabilities such as mental retardation, cerebral palsy, traumatic brain injury, mental illness, or deafness. Several disabled commenters gave personal statements about the abuse they had received at the hands of law enforcement personnel. Two organizations that commented cited the Judiciary report at 50 as authority to require law enforcement training.

The Department has not added such a training requirement to the regulation. Discriminatory arrests and brutal treatment are already unlawful police activities. The general regulatory obligation to modify policies, practices, or procedures requires law enforcement to make changes in policies that result in discriminatory arrests or abuse of individuals with disabilities. Under this section law enforcement personnel would be required to make appropriate efforts to determine whether perceived strange or disruptive behavior or unconsciousness is the result of a disability. The Department notes that a number of States have attempted to address the problem of arresting disabled persons for noncriminal conduct resulting from their disability through adoption of the Uniform Duties to Disabled Persons Act, and encourages other jurisdictions to consider that approach.

Paragraph (a) restates the nondiscrimination mandate of section 202 of the ADA. The remaining paragraphs in {35.130 establish the general principles for analyzing whether any particular action of the public entity violates this mandate.

Paragraph (b) prohibits overt denials of equal treatment of individuals with disabilities. A public entity may not refuse to provide an individual with a disability with an equal opportunity to participate in or benefit from its program simply because the person has a disability.

Paragraph (b)(1)(i) provides that it is discriminatory to deny a person with a disability the right to participate in or benefit from the aid, benefit, or service provided by a public entity. Paragraph (b)(1)(ii) provides that the aids, benefits, and services provided to persons with disabilities must be equal to those provided to others, and paragraph (b)(1)(iii) requires that the aids, benefits, or services provided to individuals with disabilities must be 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 those provided to others. These paragraphs are taken from the regulations implementing section 504 and simply restate principles long established under section 504.

Paragraph (b)(1)(iv) permits the public entity to develop separate or different aids, benefits, or services when necessary to provide individuals with disabilities with an equal opportunity to participate in or benefit from the public entity's programs or activities, but only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Paragraph (b)(1)(iv) must be read in conjunction with paragraphs (b)(2), (d), and (e). Even when separate or different aids, benefits, or

services would be more effective, paragraph (b)(2) provides that a qualified individual with a disability still has the right to choose to participate in the program that is not designed to accommodate individuals with disabilities. Paragraph (d) requires that a public entity administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

Paragraph (b)(2) specifies that, notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different. Paragraph (e), which is derived from section 501(d) of the Americans with Disabilities Act, states that nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit that he or she chooses not to accept.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do.

Integration is fundamental to the purposes of the Americans with Disabilities Act. Provision of segregated accommodations and services relegates persons with disabilities to second-class status. For example, it would be a violation of this provision to require persons with disabilities to eat in the back room of a government cafeteria or to refuse to allow a person with a disability the full use of recreation or exercise facilities because of stereotypes about the person's ability to participate.

Many commenters objected to proposed paragraphs (b)(1)(iv) and (d) as allowing continued segregation of individuals with disabilities. The Department recognizes that promoting integration of individuals with disabilities into the mainstream of society is an important objective of the ADA and agrees that, in most instances, separate programs for individuals with disabilities will not be permitted. Nevertheless, section 504 does permit separate programs in limited circumstances, and Congress clearly intended the regulations issued under title II to adopt the standards of section 504. Furthermore, Congress included authority for separate programs in the specific requirements of title III of the Act. Section 302(b)(1)(A)(iii) of the Act provides for separate benefits in language similar to that in {35.130(b)(1)(iv), and section 302(b)(1)(B) includes the same requirement for "the most integrated setting appropriate" as in {35.130(d).

Even when separate programs are permitted, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and overarching principle of the Americans with Disabilities Act. Separate, special, or different programs that are designed to provide a benefit to persons with disabilities cannot be used to restrict the participation of persons with disabilities in general, integrated activities.

For example, a person who is blind may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. It is not the intent of this section to require the person who is blind to avail himself or herself of the special tour. Modified participation for persons with disabilities must be a choice, not a requirement.

In addition, it would not be a violation of this section for a public entity to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this

section if the entity then excluded these children from other recreational services for which they are qualified to participate when these services are made available to nondisabled children, or if the entity required children with disabilities to attend only designated programs.

Many commenters asked that the Department clarify a public entity's obligations within the integrated program when it offers a separate program but an individual with a disability chooses not to participate in the separate program. It is impossible to make a blanket statement as to what level of auxiliary aids or modifications would be required in the integrated program. Rather, each situation must be assessed individually. The starting point is to question whether the separate program is in fact necessary or appropriate for the individual. Assuming the separate program would be appropriate for a particular individual, the extent to which that individual must be provided with modifications in the integrated program will depend not only on what the individual needs but also on the limitations and defenses of this part. For example, it may constitute an undue burden for a public accommodation, which provides a full-time interpreter in its special guided tour for individuals with hearing impairments, to hire an additional interpreter for those individuals who choose to attend the integrated program. The Department cannot identify categorically the level of assistance or aid required in the integrated program.

Paragraph (b)(1)(v) provides that a public entity may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program. This paragraph is taken from the regulations implementing section 504 for federally assisted programs.

Paragraph (b)(1)(vi) prohibits the public entity from denying a qualified individual with a disability the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vii) prohibits the public entity from limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the public entity from utilizing criteria or methods of administration that deny individuals with disabilities access to the public entity's services, programs, and activities or that perpetuate the discrimination of another public entity, if both public entities are subject to common administrative control or are agencies of the same State. The phrase "criteria or methods of administration" refers to official written policies of the public entity and to the actual practices of the public entity. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985). The Court in Choate explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted: "These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design." *Id.* at 297 (footnote omitted).

Paragraph (b)(4) specifically applies the prohibition enunciated in {35.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the public entity. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the public entity, in the selection of procurement contractors, from using

criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

Paragraph (b)(6) prohibits the public entity from discriminating against qualified individuals with disabilities on the basis of disability in the granting of licenses or certification. A person is a "qualified individual with a disability" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* {35.104).

A number of commenters were troubled by the phrase "essential eligibility requirements" as applied to State licensing requirements, especially those for health care professions. Because of the variety of types of programs to which the definition of "qualified individual with a disability" applies, it is not possible to use more specific language in the definition. The phrase "essential eligibility requirements," however, is taken from the definitions in the regulations implementing section 504, so caselaw under section 504 will be applicable to its interpretation. In *Southeastern Community College v. Davis*, 442 U.S. 397, for example, the Supreme Court held that section 504 does not require an institution to "lower or effect substantial modifications of standards to accommodate a handicapped person," 442 U.S. at 413, and that the school had established that the plaintiff was not "qualified" because she was not able to "serve the nursing profession in all customary ways," *id.* Whether a particular requirement is "essential" will, of course, depend on the facts of the particular case.

In addition, the public entity may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. For example, the public entity must comply with this requirement when establishing safety standards for the operations of licensees. In that case the public entity must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with disabilities in an impermissible manner.

Paragraph (b)(6) does not extend the requirements of the Act or this part directly to the programs or activities of licensees or certified entities themselves. The programs or activities of licensees or certified entities are not themselves programs or activities of the public entity merely by virtue of the license or certificate.

Paragraph (b)(7) is a specific application of the requirement under the general prohibitions of discrimination that public entities make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination on the basis of disability. Section 302(b)(2)(A)(ii) of the ADA sets out this requirement specifically for public accommodations covered by title III of the Act, and the House Judiciary Committee Report directs the Attorney General to include those specific requirements in the title II regulation to the extent that they do not conflict with the regulations implementing section 504. Judiciary report at 52.

Paragraph (b)(8), a new paragraph not contained in the proposed rule, prohibits the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. This prohibition is also a specific application of the general prohibitions of discrimination and is based on section 302(b)(2)(A)(i) of the ADA. It prohibits overt denials of equal treatment of individuals with disabilities, or establishment of exclusive or segregative criteria that would bar individuals with disabilities from participation in services, benefits, or activities.

Paragraph (b)(8) also prohibits policies that unnecessarily impose requirements or burdens on individuals with disabilities that are not placed on others. For example, public entities may not require

that a qualified individual with a disability be accompanied by an attendant. A public entity is not, however, required to provide attendant care, or assistance in toileting, eating, or dressing to individuals with disabilities, except in special circumstances, such as where the individual is an inmate of a custodial or correctional institution.

In addition, paragraph (b)(8) prohibits the imposition of criteria that "tend to" screen out an individual with a disability. This concept, which is derived from current regulations under section 504 (*see, e.g.*, 45 CFR 84.13), makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate. For example, requiring presentation of a driver's license as the sole means of identification for purposes of paying by check would violate this section in situations where, for example, individuals with severe vision impairments or developmental disabilities or epilepsy are ineligible to receive a driver's license and the use of an alternative means of identification, such as another photo I.D. or credit card, is feasible.

A public entity may, however, impose neutral rules and criteria that screen out, or tend to screen out, individuals with disabilities if the criteria are necessary for the safe operation of the program in question. Examples of safety qualifications that would be justifiable in appropriate circumstances would include eligibility requirements for drivers' licenses, or a requirement that all participants in a recreational rafting expedition be able to meet a necessary level of swimming proficiency. Safety requirements must be based on actual risks and not on speculation, stereotypes, or generalizations about individuals with disabilities.

Paragraph (c) provides that nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part. It is derived from a provision in the section 504 regulations that permits programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with disabilities or a given class of individuals with disabilities to be limited to those individuals with disabilities. Section 504 ensures that federally assisted programs are made available to all individuals, without regard to disabilities, unless the Federal program under which the assistance is provided is specifically limited to individuals with disabilities or a particular class of individuals with disabilities. Because coverage under this part is not limited to federally assisted programs, paragraph (c) has been revised to clarify that State and local governments may provide special benefits, beyond those required by the nondiscrimination requirements of this part, that are limited to individuals with disabilities or a particular class of individuals with disabilities, without thereby incurring additional obligations to persons without disabilities or to other classes of individuals with disabilities.

Paragraphs (d) and (e), previously referred to in the discussion of paragraph (b)(1)(iv), provide that the public entity must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, *i.e.*, in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and that persons with disabilities must be provided the option of declining to accept a particular accommodation.

Some commenters expressed concern that {35.130(e), which states that nothing in the rule requires an individual with a disability to accept special accommodations and services provided under the ADA, could be interpreted to allow guardians of infants or older people with disabilities to refuse medical treatment for their wards. Section 35.130(e) has been revised to make it clear that paragraph (e) is inapplicable to the concern of the commenters. A new paragraph (e)(2) has been added stating that nothing in the regulation authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual. New paragraph (e) clarifies that neither the ADA nor the regulation alters current Federal law ensuring the rights of

incompetent individuals with disabilities to receive food, water, and medical treatment. *See, e.g.*, Child Abuse Amendments of 1984 (42 U.S.C. 5106a(b)(10), 5106g(10)); Rehabilitation Act of 1973, as amended (29 U.S.C. 794); the Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. 6042).

Sections 35.130(e)(1) and (2) are based on section 501(d) of the ADA. Section 501(d) was designed to clarify that nothing in the ADA requires individuals with disabilities to accept special accommodations and services for individuals with disabilities that may segregate them:

The Committee added this section [501(d)] to clarify that nothing in the ADA is intended to permit discriminatory treatment on the basis of disability, even when such treatment is rendered under the guise of providing an accommodation, service, aid or benefit to the individual with disability. For example, a blind individual may choose not to avail himself or herself of the right to go to the front of a line, even if a particular public accommodation has chosen to offer such a modification of a policy for blind individuals. Or, a blind individual may choose to decline to participate in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibits at his or her own pace with the museum's recorded tour.

Judiciary report at 71-72. The Act is not to be construed to mean that an individual with disabilities must accept special accommodations and services for individuals with disabilities when that individual can participate in the regular services already offered. Because medical treatment, including treatment for particular conditions, is not a special accommodation or service for individuals with disabilities under section 501(d), neither the Act nor this part provides affirmative authority to suspend such treatment. Section 501(d) is intended to clarify that the Act is not designed to foster discrimination through mandatory acceptance of special services when other alternatives are provided; this concern does not reach to the provision of medical treatment for the disabling condition itself.

Paragraph (f) provides that a public entity may not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover any costs of measures required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part. Such measures may include the provision of auxiliary aids or of modifications required to provide program accessibility.

Several commenters asked for clarification that the costs of interpreter services may not be assessed as an element of "court costs." The Department has already recognized that imposition of the cost of courtroom interpreter services is impermissible under section 504. The preamble to the Department's section 504 regulation for its federally assisted programs states that where a court system has an obligation to provide qualified interpreters, "it has the corresponding responsibility to pay for the services of the interpreters." (45 FR 37630 (June 3, 1980)). Accordingly, recouping the costs of interpreter services by assessing them as part of court costs would also be prohibited.

Paragraph (g), which prohibits discrimination on the basis of an individual's or entity's known relationship or association with an individual with a disability, is based on sections 102(b)(4) and 302(b)(1)(E) of the ADA. This paragraph was not contained in the proposed rule. The individuals covered under this paragraph are any individuals who are discriminated against because of their known association with an individual with a disability. For example, it would be a violation of this paragraph for a local government to refuse to allow a theater company to use a school auditorium on the grounds that the company had recently performed for an audience of individuals with HIV disease.

This protection is not limited to those who have a familial relationship with the individual who has a

disability. Congress considered, and rejected, amendments that would have limited the scope of this provision to specific associations and relationships. Therefore, if a public entity refuses admission to a person with cerebral palsy and his or her companions, the companions have an independent right of action under the ADA and this section.

During the legislative process, the term "entity" was added to section 302(b)(l)(E) to clarify that the scope of the provision is intended to encompass not only persons who have a known association with a person with a disability, but also entities that provide services to or are otherwise associated with such individuals. This provision was intended to ensure that entities such as health care providers, employees of social service agencies, and others who provide professional services to persons with disabilities are not subjected to discrimination because of their professional association with persons with disabilities.

{35.131 Illegal use of drugs.

Section 35.131 effectuates section 510 of the ADA, which clarifies the Act's application to people who use drugs illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

The Act and the regulation distinguish between illegal use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Some controlled substances are prescription drugs that have legitimate medical uses. Section 35.131 does not affect use of controlled substances pursuant to a valid prescription under supervision by a licensed health care professional, or other use that is authorized by the Controlled Substances Act or any other provision of Federal law. It does apply to illegal use of those substances, as well as to illegal use of controlled substances that are not prescription drugs. The key question is whether the individual's use of the substance is illegal, not whether the substance has recognized legal uses. Alcohol is not a controlled substance, so use of alcohol is not addressed by {35.131 (although alcoholics are individuals with disabilities, subject to the protections of the statute).

A distinction is also made between the use of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the illegal use of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in {35.104, which is based on the report of the Conference Committee, H.R. Conf. Rep. No. 596, 101st Cong., 2d Sess. 64 (1990) [hereinafter "Conference report"], is "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use, is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided in connection with drug rehabilitation to an individual on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services. A health care facility, such as a hospital or clinic, may not refuse treatment to an individual in need of the services it provides on the grounds that the individual is illegally using drugs, but it is not required by this section to provide services that it does not ordinarily provide. For example, a health care facility that specializes in a particular type of treatment, such as care of burn victims, is not required to provide drug rehabilitation services, but it cannot refuse to treat a individual's burns on the grounds that the individual is illegally using drugs.

Some commenters pointed out that abstention from the use of drugs is an essential condition of participation in some drug rehabilitation programs, and may be a necessary requirement in inpatient or residential settings. The Department believes that this comment is well-founded. Congress clearly intended to prohibit exclusion from drug treatment programs of the very individuals who need such programs because of their use of drugs, but, once an individual has been admitted to a program, abstention may be a necessary and appropriate condition to continued participation. The final rule therefore provides that a drug rehabilitation or treatment program may prohibit illegal use of drugs by individuals while they are participating in the program.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 510(b) of the Act that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure that an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully is no longer engaging in the illegal use of drugs. The section is not to be "construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs."

Paragraph 35.131(c) clarifies that it is not a violation of this part to adopt or administer reasonable policies or procedures to ensure that an individual who formerly engaged in the illegal use of drugs is not currently engaging in illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other procedures that would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs." A commenter argued that the rule should permit testing for lawful use of prescription drugs, but most commenters preferred that tests must be limited to *unlawful* use in order to avoid revealing the lawful use of prescription medicine used to treat disabilities.

{35.132 Smoking.

Section 35.132 restates the clarification in section 501(b) of the Act that the Act does not preclude the prohibition of, or imposition of restrictions on, smoking in transportation covered by title II. Some commenters argued that this section is too limited in scope, and that the regulation should prohibit smoking in all facilities used by public entities. The reference to smoking in section 501, however, merely clarifies that the Act does not require public entities to accommodate smokers by permitting them to smoke in transportation facilities.

{35.133 Maintenance of accessible features.

Section 35.133 provides that a public entity shall maintain in operable working condition those features

of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part. The Act requires that, to the maximum extent feasible, facilities must be accessible to, and usable by, individuals with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them. Inoperable elevators, locked accessible doors, or "accessible" routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities.

Some commenters objected that this section appeared to establish an absolute requirement and suggested that language from the preamble be included in the text of the regulation. It is, of course, impossible to guarantee that mechanical devices will never fail to operate. Paragraph (b) of the final regulation provides that this section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This paragraph is intended to clarify that temporary obstructions or isolated instances of mechanical failure would not be considered violations of the Act or this part. However, allowing obstructions or "out of service" equipment to persist beyond a reasonable period of time would violate this part, as would repeated mechanical failures due to improper or inadequate maintenance. Failure of the public entity to ensure that accessible routes are properly maintained and free of obstructions, or failure to arrange prompt repair of inoperable elevators or other equipment intended to provide access would also violate this part.

Other commenters requested that this section be expanded to include specific requirements for inspection and maintenance of equipment, for training staff in the proper operation of equipment, and for maintenance of specific items. The Department believes that this section properly establishes the general requirement for maintaining access and that further details are not necessary.

{35.134 Retaliation or coercion.

Section 35.134 implements section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the Act. This section is unchanged from the proposed rule. Paragraph (a) of {35.134 provides that no private or public entity shall discriminate against any individual because that individual has exercised his or her right to oppose any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

Paragraph (b) provides that no private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise of his or her rights under this part or because that individual aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by the Act or this part.

This section protects not only individuals who allege a violation of the Act or this part, but also any individuals who support or assist them. This section applies to all investigations or proceedings initiated under the Act or this part without regard to the ultimate resolution of the underlying allegations. Because this section prohibits any act of retaliation or coercion in response to an individual's effort to exercise rights established by the Act and this part (or to support the efforts of another individual), the section applies not only to public entities subject to this part, but also to persons acting in an individual capacity or to private entities. For example, it would be a violation of the Act and this part for a private individual to harass or intimidate an individual with a disability in an effort to prevent that individual from attending a concert in a State-owned park. It would, likewise, be a violation of the Act and this part for a private entity to take adverse action against an employee who appeared as a witness on behalf of an individual who sought to enforce the Act.

{35.135 Personal devices and services.

The final rule includes a new {35.135, entitles "Personal devices and services," which states that the provision of personal devices and services is not required by title II. This new section, which serves as a limitation on all of the requirements of the regulation, replaces {35.160(b)(2) of the proposed rule, which addressed the issue of personal devices and services explicitly only in the context of communications. The personal devices and services limitation was intended to have general application in the proposed rule in all contexts where it was relevant. The final rule, therefore, clarifies this point by including a general provision that will explicitly apply not only to auxiliary aids and services but across-the-board to include other relevant areas such as, for example, modifications in policies, practices, and procedures ({35.130(b)(7)). The language of {35.135 parallels an analogous provision in the Department's title III regulations (28 CFR {36.306) but preserves the explicit reference to "readers for personal use or study" in {35.160(b)(2) of the proposed rule. This section does not preclude the short-term loan of personal receivers that are part of an assistive listening system.

Subpart C -- Employment

{35.140 Employment discrimination prohibited.

Title II of the ADA applies to all activities of public entities, including their employment practices. The proposed rule cross-referenced the definitions, requirements, and procedures of title I of the ADA, as established by the Equal Employment Opportunity Commission in 29 CFR Part 1630. This proposal would have resulted in use, under {35.140, of the title I definition of "employer," so that a public entity with 25 or more employees would have become subject to the requirements of {35.140 on July 26, 1992, one with 15 to 24 employees on July 26, 1994, and one with fewer than 15 employees would have been excluded completely.

The Department received comments objecting to this approach. The commenters asserted that Congress intended to establish nondiscrimination requirements for employment by all public entities, including those that employ fewer than 15 employees; and that Congress intended the employment requirements of title II to become effective at the same time that the other requirements of this regulation become effective, January 26, 1992. The Department has reexamined the statutory language and legislative history of the ADA on this issue and has concluded that Congress intended to cover the employment practices of all public entities and that the applicable effective date is that of title II.

The statutory language of section 204(b) of the ADA requires the Department to issue a regulation that is consistent with the ADA and the Department's coordination regulation under section 504, 28 CFR part 41. The coordination regulation specifically requires nondiscrimination in employment, 28 CFR {{41.52-41.55, and does not limit coverage based on size of employer. Moreover, under all section 504 implementing regulations issued in accordance with the Department's coordination regulation, employment coverage under section 504 extends to all employers with federally assisted programs or activities, regardless of size, and the effective date for those employment requirements has always been the same as the effective date for nonemployment requirements established in the same regulations. The Department therefore concludes that {35.140 must apply to all public entities upon the effective date of this regulation.

In the proposed regulation the Department cross-referenced the regulations implementing title I of the ADA, issued by the Equal Employment Opportunity Commission at 29 CFR part 1630, as a compliance standard for {35.140 because, as proposed, the scope of coverage and effective date of coverage under title II would have been coextensive with title I. In the final regulation this language is modified slightly.

Subparagraph (1) of new paragraph (b) makes it clear that the standards established by the Equal Employment Opportunity Commission in 29 CFR part 1630 will be the applicable compliance standards if the public entity is subject to title I. If the public entity is not covered by title I, or until it is covered by title I, subparagraph (b)(2) cross- references section 504 standards for what constitutes employment discrimination, as established by the Department of Justice in 28 CFR part 41. Standards for title I of the ADA and section 504 of the Rehabilitation Act are for the most part identical because title I of the ADA was based on requirements set forth in regulations implementing section 504.

The Department, together with the other Federal agencies responsible for the enforcement of Federal laws prohibiting employment discrimination on the basis of disability, recognizes the potential for jurisdictional overlap that exists with respect to coverage of public entities and the need to avoid problems related to overlapping coverage. The other Federal agencies include the Equal Employment Opportunity Commission, which is the agency primarily responsible for enforcement of title I of the ADA, the Department of Labor, which is the agency responsible for enforcement of section 503 of the Rehabilitation Act of 1973, and 26 Federal agencies with programs of Federal financial assistance, which are responsible for enforcing section 504 in those programs. Section 107 of the ADA requires that coordination mechanisms be developed in connection with the administrative enforcement of complaints alleging discrimination under title I and complaints alleging discrimination in employment in violation of the Rehabilitation Act. Although the ADA does not specifically require inclusion of employment complaints under title II in the coordinating mechanisms required by title I, Federal investigations of title II employment complaints will be coordinated on a government-wide basis also. The Department is currently working with the EEOC and other affected Federal agencies to develop effective coordinating mechanisms, and final regulations on this issue will be issued on or before January 26, 1992.

Subpart D -- Program Accessibility

{35.149 Discrimination prohibited.

Section 35.149 states the general nondiscrimination principle underlying the program accessibility requirements of {{35.150 and 35.151.

{35.150 Existing facilities.

Consistent with section 204(b) of the Act, this regulation adopts the program accessibility concept found in the section 504 regulations for federally conducted programs or activities (e.g., 28 CFR Part 39). The concept of "program accessibility" was first used in the section 504 regulation adopted by the Department of Health, Education, and Welfare for its federally assisted programs and activities in 1977. It allowed recipients to make their federally assisted programs and activities available to individuals with disabilities without extensive retrofitting of their existing buildings and facilities, by offering those programs through alternative methods. Program accessibility has proven to be a useful approach and was adopted in the regulations issued for programs and activities conducted by Federal Executive agencies. The Act provides that the concept of program access will continue to apply with respect to facilities now in existence, because the cost of retrofitting existing facilities is often prohibitive.

Section 35.150 requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. The regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible ({35.150(a)(1)). Unlike title III of the Act, which requires public accommodations to remove architectural barriers where such removal is "readily achievable," or to provide goods and services through alternative methods, where those methods are "readily achievable," title II requires a public

entity to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Congress intended the "undue burden" standard in title II to be significantly higher than the "readily achievable" standard in title III. Thus, although title II may not require removal of barriers in some cases where removal would be required under title III, the program access requirement of title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases.

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3), which is taken from the section 504 regulations for federally conducted programs, generally codifies case law that defines the scope of the public entity's obligation to ensure program accessibility. This paragraph provides that, in meeting the program accessibility requirement, a public entity is not required to take any action that would result in a fundamental alteration in the nature of its service, program, or activity or in undue financial and administrative burdens. A similar limitation is provided in {35.164.

This paragraph does not establish an absolute defense; it does not relieve a public entity of all obligations to individuals with disabilities. Although a public entity is not required to take actions that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with disabilities receive the benefits or services provided by the public entity.

It is the Department's view that compliance with {35.150(a), like compliance with the corresponding provisions of the section 504 regulations for federally conducted programs, would in most cases not result in undue financial and administrative burdens on a public entity. In determining whether financial and administrative burdens are undue, all public entity resources available for use in the funding and operation of the service, program, or activity should be considered. The burden of proving that compliance with paragraph (a) of {35.150 would fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens rests with the public entity.

The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The Department recognizes the difficulty of identifying the official responsible for this determination, given the variety of organizational forms that may be taken by public entities and their components. The intention of this paragraph is that the determination must be made by a high level official, no lower than a Department head, having budgetary authority and responsibility for making spending decisions.

Any person who believes that he or she or any specific class of persons has been injured by the public entity head's decision or failure to make a decision may file a complaint under the compliance procedures established in subpart F.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides.

The Department wishes to clarify that, consistent with longstanding interpretation of section 504, carrying an individual with a disability is considered an ineffective and therefore an unacceptable

method for achieving program accessibility. Department of Health, Education, and Welfare, Office of Civil Rights, Policy Interpretation No. 4, 43 Fed. Reg. 36035 (August 14, 1978). Carrying will be permitted only in manifestly exceptional cases, and only if all personnel who are permitted to participate in carrying an individual with a disability are formally instructed on the safest and least humiliating means of carrying. "Manifestly exceptional" cases in which carrying would be permitted might include, for example, programs conducted in unique facilities, such as an oceanographic vessel, for which structural changes and devices necessary to adapt the facility for use by individuals with mobility impairments are unavailable or prohibitively expensive. Carrying is not permitted as an alternative to structural modifications such as installation of a ramp or a chairlift.

In choosing among methods, the public entity shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with disabilities. Structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The requirements of {35.151 for alterations apply to structural changes undertaken to comply with this section. The public entity may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties, on the one hand, and to eliminate discrimination against individuals with disabilities on the other, paragraph (a)(2) provides that a public entity is not required to take any action that would threaten or destroy the historic significance of an historic property. The special limitation on program accessibility set forth in paragraph (a)(2) is applicable only to historic preservation programs, as defined in {35.104, that is, programs that have preservation of historic properties as a primary purpose. Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program, the public entity is not required to use a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might threaten or destroy significant historic features of the historic property. Thus, government programs located in historic properties, such as an historic State capitol, are not excused from the requirement for program access.

Paragraph (a)(2), therefore, will apply only to those programs that uniquely concern the preservation and experience of the historic property itself. Because the primary benefit of an historic preservation program is the experience of the historic property, paragraph (b)(2) requires the public entity to give priority to methods of providing program accessibility that permit individuals with disabilities to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the public entity administer programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities ({35.130(d)). Only when providing physical access would threaten or destroy the historic significance of an historic property, or would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens, may the public entity adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in paragraph (b)(2).

Time periods. Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. Like the regulations for federally assisted programs (e.g., 28 CFR 41.57(b)), paragraph (c) requires the public entity to make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation.

The proposed rule provided that, aside from structural changes, all other necessary steps to achieve compliance with this part must be taken within sixty days. The sixty day period was taken from regulations implementing section 504, which generally were effective no more than thirty days after publication. Because this regulation will not be effective until January 26, 1992, the Department has concluded that no additional transition period for non-structural changes is necessary, so the sixty day period has been omitted in the final rule. Of course, this section does not reduce or eliminate any obligations that are already applicable to a public entity under section 504.

Where structural modifications are required, paragraph (d) requires that a transition plan be developed by an entity that employs 50 or more persons, within six months of the effective date of this regulation. The legislative history of title II of the ADA makes it clear that, under title II, "local and state governments are required to provide curb cuts on public streets." Education and Labor report at 84. As the rationale for the provision of curb cuts, the House report explains, "The employment, transportation, and public accommodation sections of . . . [the ADA] would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets." *Id.* Section 35.151 (e), which establishes accessibility requirements for new construction and alterations, requires that all newly constructed or altered streets, roads, or highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, and all newly constructed or altered street level pedestrian walkways must have curb ramps or other sloped areas at intersections to streets, roads, or highways. A new paragraph (d)(2) has been added to the final rule to clarify the application of the general requirement for program accessibility to the provision of curb cuts at existing crosswalks. This paragraph requires that the transition plan include a schedule for providing curb ramps or other sloped areas at existing pedestrian walkways, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, public accommodations, and employers, followed by walkways serving other areas. Pedestrian "walkways" include locations where access is required for use of public transportation, such as bus stops that are not located at intersections or crosswalks.

Similarly, a public entity should provide an adequate number of accessible parking spaces in existing parking lots or garages over which it has jurisdiction.

Paragraph (d)(3) provides that, if a public entity has already completed a transition plan required by a regulation implementing section 504, the transition plan required by this part will apply only to those policies and practices that were not covered by the previous transition plan. Some commenters suggested that the transition plan should include all aspects of the public entity's operations, including those that may have been covered by a previous transition plan under section 504. The Department believes that such a duplicative requirement would be inappropriate. Many public entities may find, however, that it will be simpler to include all of their operations in the transition plan than to attempt to identify and exclude specifically those that were addressed in a previous plan. Of course, entities covered under section 504 are not shielded from their obligations under that statute merely because they are included under the transition plan developed under this section.

{35.151 New construction and alterations.

Section 35.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of a public entity shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities if the construction was commenced after the effective date of this part. Facilities under design on that date will be governed by this section if the date that bids were invited falls after the effective date. This interpretation is consistent with Federal practice under section 504.

Section 35.151(c) establishes two standards for accessible new construction and alteration. Under

paragraph (c), design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (hereinafter ADAAG) shall be deemed to comply with the requirements of this section with respect to those facilities except that, if ADAAG is chosen, the elevator exemption contained at {{36.401(d) and 36.404 does not apply. ADAAG is the standard for private buildings and was issued as guidelines by the Architectural and Transportation Barriers Compliance Board (ATBCB) under title III of the ADA. It has been adopted by the Department of Justice and is published as Appendix A to the Department's title III rule in today's *Federal Register*. Departures from particular requirements of these standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided. Use of two standards is a departure from the proposed rule.

The proposed rule adopted UFAS as the only interim accessibility standard because that standard was referenced by the regulations implementing section 504 of the Rehabilitation Act promulgated by most Federal funding agencies. It is, therefore, familiar to many State and local government entities subject to this rule. The Department, however, received many comments objecting to the adoption of UFAS. Commenters pointed out that, except for the elevator exemption, UFAS is not as stringent as ADAAG. Others suggested that the standard should be the same to lessen confusion.

Section 204(b) of the Act states that title II regulations must be consistent not only with section 504 regulations but also with "this Act." Based on this provision, the Department has determined that a public entity should be entitled to choose to comply either with ADAAG or UFAS.

Public entities who choose to follow ADAAG, however, are not entitled to the elevator exemption contained in title III of the Act and implemented in the title III regulation at {36.401(d) for new construction and {36.404 for alterations. Section 303(b) of title III states that, with some exceptions, elevators are not required in facilities that are less than three stories or have less than 3000 square feet per story. The section 504 standard, UFAS, contains no such exemption. Section 501 of the ADA makes clear that nothing in the Act may be construed to apply a lesser standard to public entities than the standards applied under section 504. Because permitting the elevator exemption would clearly result in application of a lesser standard than that applied under section 504, paragraph (c) states that the elevator exemption does not apply when public entities choose to follow ADAAG. Thus, a two-story courthouse, whether built according to UFAS or ADAAG, must be constructed with an elevator. It should be noted that Congress did not include an elevator exemption for public transit facilities covered by subtitle B of title II, which covers public transportation provided by public entities, providing further evidence that Congress intended that public buildings have elevators.

Section 504 of the ADA requires the ATBCB to issue supplemental Minimum Guidelines and Requirements for Accessible Design of buildings and facilities subject to the Act, including title II. Section 204(c) of the ADA provides that the Attorney General shall promulgate regulations implementing title II that are consistent with the ATBCB's ADA guidelines. The ATBCB has announced its intention to issue title II guidelines in the future. The Department anticipates that, after the ATBCB's title II guidelines have been published, this rule will be amended to adopt new accessibility standards consistent with the ATBCB's rulemaking. Until that time, however, public entities will have a choice of following UFAS or ADAAG, without the elevator exemption.

Existing buildings leased by the public entity after the effective date of this part are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in {35.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of {35.151.

The Department received many comments urging that the Department require that public entities lease only accessible buildings. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Section 204(b) of the Act states that, in the area of "program accessibility, existing facilities," the title II regulations must be consistent with section 504 regulations. Thus, the Department has adopted the section 504 principles for these types of leased buildings. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the same program accessibility standard should apply to both owned and leased existing buildings. Similarly, requiring that public entities only lease accessible space would significantly restrict the options of State and local governments in seeking leased space, which would be particularly burdensome in rural or sparsely populated areas.

On the other hand, the more accessible the leased space is, the fewer structural modifications will be required in the future for particular employees whose disabilities may necessitate barrier removal as a reasonable accommodation. Pursuant to the requirements for leased buildings contained in the Minimum Guidelines and Requirements for Accessible Design published under the Architectural Barriers Act by the ATBCB, 36 CFR 1190.34, the Federal Government may not lease a building unless it contains (1) one accessible route from an accessible entrance to those areas in which the principal activities for which the building is leased are conducted, (2) accessible toilet facilities, and (3) accessible parking facilities, if a parking area is included within the lease (36 CFR 1190.34). Although these requirements are not applicable to buildings leased by public entities covered by this regulation, such entities are encouraged to look for the most accessible space available to lease and to attempt to find space complying at least with these minimum Federal requirements.

Section 35.151(d) gives effect to the intent of Congress, expressed in section 504(c) of the Act, that this part recognize the national interest in preserving significant historic structures. Commenters criticized the Department's use of descriptive terms in the proposed rule that are different from those used in the ADA to describe eligible historic properties. In addition, some commenters criticized the Department's decision to use the concept of "substantially impairing" the historic features of a property, which is a concept employed in regulations implementing section 504 of the Rehabilitation Act of 1973. Those commenters recommended that the Department adopt the criteria of "adverse effect" published by the Advisory Council on Historic Preservation under the National Historic Preservation Act, 36 CFR 800.9, as the standard for determining whether an historic property may be altered.

The Department agrees with these comments to the extent that they suggest that the language of the rule should conform to the language employed by Congress in the ADA. A definition of "historic property," drawn from section 504 of the ADA, has been added to {35.104 to clarify that the term applies to those properties listed or eligible for listing in the National Register of Historic Places, or properties designated as historic under State or local law.

The Department intends that the exception created by this section be applied only in those very rare situations in which it is not possible to provide access to an historic property using the special access provisions established by UFAS and ADAAG. Therefore, paragraph (d)(1) of {35.151 has been revised to clearly state that alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of UFAS or section 4.1.7 of ADAAG. Paragraph (d)(2) has been revised to provide that, if it has been determined under the procedures established in UFAS and ADAAG that it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the property, alternative methods of access shall be provided pursuant to the requirements of {35.150.

In response to comments, the Department has added to the final rule a new paragraph (e) setting out the requirements of {36.151 as applied to curb ramps. Paragraph (e) is taken from the statement contained in the preamble to the proposed rule that all newly constructed or altered streets, roads, and highways must contain curb ramps at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections to streets, roads, or highways.

Subpart E -- Communications

{35.160 General.

Section 35.160 requires the public entity to take such steps as may be necessary to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

Paragraph (b)(1) requires the public entity to furnish appropriate auxiliary aids and services when necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. The public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice. This expressed choice shall be given primary consideration by the public entity (Sec.35.160(b)(2)). The public entity shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under Sec.35.164.

Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication. For instance, some courtrooms are now equipped for ``computer-assisted transcripts,'' which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays. Such a system might be an effective auxiliary aid or service for a person who is deaf or has a hearing loss who uses speech to communicate, but may be useless for someone who uses sign language.

Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient. For example, a qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.

Several commenters asked that the rule clarify that the provision of readers is sometimes necessary to ensure access to a public entity's services, programs or activities. Reading devices or readers should be provided when necessary for equal participation and opportunity to benefit from any governmental service, program, or activity, such as reviewing public documents, examining demonstrative evidence, and filling out voter registration forms or forms needed to receive public benefits. The importance of providing qualified readers for examinations administered by public entities is discussed under Sec.35.130. Reading devices and readers are appropriate auxiliary aids and services where necessary to permit an individual with a disability to participate in or benefit from a service, program, or activity.

Section 35.160(b)(2) of the proposed rule, which provided that a public entity need not furnish individually prescribed devices, readers for personal use or study, or other devices of a personal nature, has been deleted in favor of a new section in the final rule on personal devices and services (see Sec.35.135).

In response to comments, the term ``auxiliary aids and services'' is used in place of ``auxiliary aids'' in the final rule. This phrase better reflects the range of aids and services that may be required under this section.

A number of comments raised questions about the extent of a public entity's obligation to provide access to television programming for persons with hearing impairments. Television and videotape programming produced by public entities are covered by this section. Access to audio portions of such programming may be provided by closed captioning.

{35.161 Telecommunication Devices for the Deaf (TDD's)

Section 35.161 requires that, where a public entity communicates with applicants and beneficiaries by telephone, TDD's or equally effective telecommunication systems be used to communicate with individuals with impaired speech or hearing.

Problems arise when a public entity which does not have a TDD needs to communicate with an individual who uses a TDD or vice versa. Title IV of the ADA addresses this problem by requiring establishment of telephone relay services to permit communications between individuals who communicate by TDD and individuals who communicate by the telephone alone. The relay services required by title IV would involve a relay operator using both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user.

Section 204(b) of the ADA requires that the regulation implementing title II with respect to communications be consistent with the Department's regulation implementing section 504 for its federally conducted programs and activities at 28 CFR part 39. Section 35.161, which is taken from Sec.39.160(a)(2) of that regulation, requires the use of TDD's or equally effective telecommunication systems for communication with people who use TDD's. Of course, where relay services, such as those required by title IV of the ADA are available, a public entity may use those services to meet the requirements of this section.

Many commenters were concerned that public entities should not rely heavily on the establishment of relay services. The commenters explained that while relay services would be of vast benefit to both public entities and individuals who use TDD's, the services are not sufficient to provide access to all telephone services. First, relay systems do not provide effective access to the increasingly popular automated systems that require the caller to respond by pushing a button on a touch tone phone. Second, relay systems cannot operate fast enough to convey messages on answering machines, or to permit a TDD user to leave a recorded message. Third, communication through relay systems may not be appropriate in cases of crisis lines pertaining to rape, domestic violence, child abuse, and drugs. The Department believes that it is more appropriate for the Federal Communications Commission to address these issues in its rulemaking under title IV.

Some commenters requested that those entities with frequent contacts with clients who use TDD's have on-site TDD's to provide for direct communication between the entity and the individual. The Department encourages those entities that have extensive telephone contact with the public such as city halls, public libraries, and public aid offices, to have TDD's to insure more immediate access. Where the provision of telephone service is a major function of the entity, TDD's should be available.

{35.162 Telephone Emergency Services

Many public entities provide telephone emergency services by which individuals can seek immediate

assistance from police, fire, ambulance, and other emergency services. These telephone emergency services -- including ``911'' services -- are clearly an important public service whose reliability can be a matter of life or death. The legislative history of title II specifically reflects congressional intent that public entities must ensure that telephone emergency services, including 911 services, be accessible to persons with impaired hearing and speech through telecommunication technology (Conference report at 67; Education and Labor report at 84 - 85).

Proposed Sec.35.162 mandated that public entities provide emergency telephone services to persons with disabilities that are ``functionally equivalent'' to voice services provided to others. Many commenters urged the Department to revise the section to make clear that direct access to telephone emergency services is required by title II of the ADA as indicated by the legislative history (Conference report at 67 - 68; Education and Labor report at 85). In response, the final rule mandates ``direct access,'' instead of ``access that is functionally equivalent'' to that provided to all other telephone users. Telephone emergency access through a third party or through a relay service would not satisfy the requirement for direct access.

Several commenters asked about a separate seven-digit emergency call number for the 911 services. The requirement for direct access disallows the use of a separate seven-digit number where 911 service is available. Separate seven-digit emergency call numbers would be unfamiliar to many individuals and also more burdensome to use. A standard emergency 911 number is easier to remember and would save valuable time spent in searching in telephone books for a local seven-digit emergency number.

Many commenters requested the establishment of minimum standards of service (e.g., the quantity and location of TDD's and computer modems needed in a given emergency center). Instead of establishing these scoping requirements, the Department has established a performance standard through the mandate for direct access.

Section 35.162 requires public entities to take appropriate steps, including equipping their emergency systems with modern technology, as may be necessary to promptly receive and respond to a call from users of TDD's and computer modems. Entities are allowed the flexibility to determine what is the appropriate technology for their particular needs. In order to avoid mandating use of particular technologies that may become outdated, the Department has eliminated the references to the Baudot and ASCII formats in the proposed rule.

Some commenters requested that the section require the installation of a voice amplification device on the handset of the dispatcher's telephone to amplify the dispatcher's voice. In an emergency, a person who has a hearing loss may be using a telephone that does not have an amplification device. Installation of speech amplification devices on the handsets of the dispatchers' telephones would respond to that situation. The Department encourages their use.

Several commenters emphasized the need for proper maintenance of TDD's used in telephone emergency services. Section 35.133, which mandates maintenance of accessible features, requires public entities to maintain in operable working condition TDD's and other devices that provide direct access to the emergency system.

{35.163 Information and Signage

Section 35.163(a) requires the public entity to provide information to individuals with disabilities concerning accessible services, activities, and facilities. Paragraph (b) requires the public entity to provide signage at all inaccessible entrances to each of its facilities that directs users to an accessible

entrance or to a location with information about accessible facilities.

Several commenters requested that, where TDD-equipped pay phones or portable TDD's exist, clear signage should be posted indicating the location of the TDD. The Department believes that this is required by paragraph (a). In addition, the Department recommends that, in large buildings that house TDD's, directional signage indicating the location of available TDD's should be placed adjacent to banks of telephones that do not contain a TDD.

{35.164 Duties

Section 35.164, like paragraph (a)(3) of Sec.35.150, is taken from the section 504 regulations for federally conducted programs. Like paragraph (a)(3), it limits the obligation of the public entity to ensure effective communication in accordance with Davis and the circuit court opinions interpreting it. It also includes specific requirements for determining the existence of undue financial and administrative burdens. The preamble discussion of Sec.35.150(a) regarding that determination is applicable to this section and further explains the public entity's obligation to comply with Sec.35.160 - 35.164. Because of the essential nature of the services provided by telephone emergency systems, the Department assumes that Sec.35.164 will rarely be applied to Sec.35.162.

Subpart F -- Compliance Procedures

Subpart F sets out the procedures for administrative enforcement of this part. Section 203 of the Act provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) for enforcement of section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicap in programs and activities that receive Federal financial assistance, shall be the remedies, procedures, and rights for enforcement of title II. Section 505, in turn, incorporates by reference the remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d - 4a). Title VI, which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs, is enforced by the Federal agencies that provide the Federal financial assistance to the covered programs and activities in question. If voluntary compliance cannot be achieved, Federal agencies enforce title VI either by the termination of Federal funds to a program that is found to discriminate, following an administrative hearing, or by a referral to this Department for judicial enforcement.

Title II of the ADA extended the requirements of section 504 to all services, programs, and activities of State and local governments, not only those that receive Federal financial assistance. The House Committee on Education and Labor explained the enforcement provisions as follows:

It is the Committee's intent that administrative enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.

The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local governments. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, . . . the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.

The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that persons with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.

Education & Labor report at 98. *See also* S. Rep. No. 116, 101st Cong., 1st Sess., at 57-58 (1989).

Subpart F effectuates the congressional intent by deferring to section 504 procedures where those procedures are applicable, that is, where a Federal agency has jurisdiction under section 504 by virtue of its provision of Federal financial assistance to the program or activity in which the discrimination is alleged to have occurred. Deferral to the 504 procedures also makes the sanction of fund termination available where necessary to achieve compliance. Because the Civil Rights Restoration Act (Pub. L. 100-259) extended the application of section 504 to all of the operations of the public entity receiving the Federal financial assistance, many activities of State and local governments are already covered by section 504. The procedures in subpart F apply to complaints concerning services, programs, and activities of public entities that are covered by the ADA.

Subpart G designates the Federal agencies responsible for enforcing the ADA with respect to specific components of State and local government. It does not, however, displace existing jurisdiction under section 504 of the various funding agencies. Individuals may still file discrimination complaints against recipients of Federal financial assistance with the agencies that provide that assistance, and the funding agencies will continue to process those complaints under their existing procedures for enforcing section 504. The substantive standards adopted in this part for title II of the ADA are generally the same as those required under section 504 for federally assisted programs, and public entities covered by the ADA are also covered by the requirements of section 504 to the extent that they receive Federal financial assistance. To the extent that title II provides greater protection to the rights of individuals with disabilities, however, the funding agencies will also apply the substantive requirements established under title II and this part in processing complaints covered by both this part and section 504, except that fund termination procedures may be used only for violations of section 504.

Subpart F establishes the procedures to be followed by the agencies designated in subpart G for processing complaints against State and local government entities when the designated agency does not have jurisdiction under section 504.

{35.170 Complaints.

Section 35.170 provides that any individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part within 180 days of the date of the alleged discrimination, unless the time for filing is extended by the agency for good cause. Although {35.107 requires public entities that employ 50 or more persons to establish grievance procedures for resolution of complaints, exhaustion of those procedures is not a prerequisite to filing a complaint under this section. If a complainant chooses to follow the public entity's grievance procedures, however, any resulting delay may be considered good cause for extending the time allowed for filing a complaint under this part.

Filing the complaint with any Federal agency will satisfy the requirement for timely filing. As explained below, a complaint filed with an agency that has jurisdiction under section 504 will be processed under the agency's procedures for enforcing section 504.

Some commenters objected to the complexity of allowing complaints to be filed with different agencies. The multiplicity of enforcement jurisdiction is the result of following the statutorily mandated enforcement scheme. The Department has, however, attempted to simplify procedures for complainants by making the Federal agency that receives the complaint responsible for referring it to an appropriate agency.

The Department has also added a new paragraph (c) to this section providing that a complaint may be filed with any agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice. Under {35.171 (a)(2), the Department of Justice will refer complaints for which it does not have jurisdiction under section 504 to an agency that does have jurisdiction under section 504, or to the agency designated under subpart G as responsible for complaints filed against the public entity that is the subject of the complaint or in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission. Complaints filed with the Department of Justice may be sent to the Coordination and Review Section, P.O. Box 66118, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20035-6118.

{35.171 Acceptance of complaints.

Section 35.171 establishes procedures for determining jurisdiction and responsibility for processing complaints against public entities. The final rule provides complainants an opportunity to file with the Federal funding agency of their choice. If that agency does not have jurisdiction under section 504, however, and is not the agency designated under subpart G as responsible for that public entity, the agency must refer the complaint to the Department of Justice, which will be responsible for referring it either to an agency that does have jurisdiction under section 504 or to the appropriate designated agency, or in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission.

Whenever an agency receives a complaint over which it has jurisdiction under section 504, it will process the complaint under its section 504 procedures. When the agency designated under subpart G receives a complaint for which it does not have jurisdiction under section 504, it will treat the complaint as an ADA complaint under the procedures established in this subpart.

Section 35.171 also describes agency responsibilities for the processing of employment complaints. As described in connection with {35.140, additional procedures regarding the coordination of employment complaints will be established in a coordination regulation issued by DOJ and EEOC. Agencies with jurisdiction under section 504 for complaints alleging employment discrimination also covered by title I will follow the procedures established by the coordination regulation for those complaints. Complaints covered by title I but not section 504 will be referred to the EEOC, and complaints covered by this part but not title I will be processed under the procedures in this part.

{35.172 Resolution of complaints.

Section 35.172 requires the designated agency to either resolve the complaint or issue to the complainant and the public entity a Letter of Findings containing findings of fact and conclusions of law and a description of a remedy for each violation found.

The Act requires the Department of Justice to establish administrative procedures for resolution of complaints, but does not require complainants to exhaust these administrative remedies. The Committee Reports make clear that Congress intended to provide a private right of action with the full panoply of

remedies for individual victims of discrimination. Because the Act does not require exhaustion of administrative remedies, the complainant may elect to proceed with a private suit at any time.

{35.173 Voluntary compliance agreements.

Section 35.173 requires the agency to attempt to resolve all complaints in which it finds noncompliance through voluntary compliance agreements enforceable by the Attorney General.

{35.174 Referral.

Section 35.174 provides for referral of the matter to the Department of Justice if the agency is unable to obtain voluntary compliance.

{35.175 Attorney's fees.

Section 35.175 states that courts are authorized to award attorneys fees, including litigation expenses and costs, as provided in section 505 of the Act. Litigation expenses include items such as expert witness fees, travel expenses, etc. The Judiciary Committee Report specifies that such items are included under the rubric of "attorneys fees" and not "costs" so that such expenses will be assessed against a plaintiff only under the standard set forth in *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412 (1978). (Judiciary report at 73.)

{35.176 Alternative means of dispute resolution.

Section 35.176 restates section 513 of the Act, which encourages use of alternative means of dispute resolution.

{35.177 Effect of unavailability of technical assistance.

Section 35.177 explains that, as provided in section 506(e) of the Act, a public entity is not excused from compliance with the requirements of this part because of any failure to receive technical assistance.

{35.178 State immunity.

Section 35.178 restates the provision of section 502 of the Act that a State is not immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court for violations of the Act, and that the same remedies are available for any such violations as are available in an action against an entity other than a State.

Subpart G -- Designated Agencies

{35.190 Designated agencies.

Subpart G designates the Federal agencies responsible for investigating complaints under this part. At least 26 agencies currently administer programs of Federal financial assistance that are subject to the nondiscrimination requirements of section 504 as well as other civil rights statutes. A majority of these agencies administer modest programs of Federal financial assistance and/or devote minimal resources exclusively to "external" civil rights enforcement activities. Under Executive Order 12250, the Department of Justice has encouraged the use of delegation agreements under which certain civil rights compliance responsibilities for a class of recipients funded by more than one agency are delegated by an

agency or agencies to a "lead" agency. For example, many agencies that fund institutions of higher education have signed agreements that designate the Department of Education as the "lead" agency for this class of recipients.

The use of delegation agreements reduces overlap and duplication of effort, and thereby strengthens overall civil rights enforcement. However, the use of these agreements to date generally has been limited to education and health care recipients. These classes of recipients are funded by numerous agencies and the logical connection to a lead agency is clear (e.g., the Department of Education for colleges and universities, and the Department of Health and Human Services for hospitals).

The ADA's expanded coverage of State and local government operations further complicates the process of establishing Federal agency jurisdiction for the purpose of investigating complaints of discrimination on the basis of disability. Because all operations of public entities now are covered irrespective of the presence or absence of Federal financial assistance, many additional State and local government functions and organizations now are subject to Federal jurisdiction. In some cases, there is no historical or single clear-cut subject matter relationship with a Federal agency as was the case in the education example described above. Further, the 33,000 governmental jurisdictions subject to the ADA differ greatly in their organization, making a detailed and workable division of Federal agency jurisdiction by individual State, county, or municipal entity unrealistic.

This regulation applies the delegation concept to the investigation of complaints of discrimination on the basis of disability by public entities under the ADA. It designates eight agencies, rather than all agencies currently administering programs of Federal financial assistance, as responsible for investigating complaints under this part. These "designated agencies" generally have the largest civil rights compliance staffs, the most experience in complaint investigations and disability issues, and broad yet clear subject area responsibilities. This division of responsibilities is made functionally rather than by public entity type or name designation. For example, all entities (regardless of their title) that exercise responsibilities, regulate, or administer services or programs relating to lands and natural resources fall within the jurisdiction of the Department of Interior.

Complaints under this part will be investigated by the designated agency most closely related to the functions exercised by the governmental component against which the complaint is lodged. For example, a complaint against a State medical board, where such a board is a recognizable entity, will be investigated by the Department of Health and Human Services (the designated agency for regulatory activities relating to the provision of health care), even if the board is part of a general umbrella department of planning and regulation (for which the Department of Justice is the designated agency). If two or more agencies have apparent responsibility over a complaint, section 35.190(c) provides that the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

Thirteen commenters, including four proposed designated agencies, addressed the Department of Justice's identification in the proposed regulation of nine "designated agencies" to investigate complaints under this part. Most comments addressed the proposed specific delegations to the various individual agencies. The Department of Justice agrees with several commenters who pointed out that responsibility for "historic and cultural preservation" functions appropriately belongs with the Department of Interior rather than the Department of Education. The Department of Justice also agrees with the Department of Education that "museums" more appropriately should be delegated to the Department of Interior, and that "preschool and daycare programs" more appropriately should be assigned to the Department of Health and Human Services, rather than to the Department of Education. The final rule reflects these decisions.

The Department of Commerce opposed its listing as the designated agency for "commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business". The Department of Commerce cited its lack of a substantial existing section 504 enforcement program and experience with many of the specific functions to be delegated. The Department of Justice accedes to the Department of Commerce's position, and has assigned itself as the designated agency for these functions.

In response to a comment from the Department of Health and Human Services, the regulation's category of "medical and nursing schools" has been clarified to read "schools of medicine, dentistry, nursing, and other health-related fields". Also in response to a comment from the Department of Health and Human Services, "correctional institutions" have been specifically added to the public safety and administration of justice functions assigned to the Department of Justice.

The regulation also assigns the Department of Justice as the designated agency responsible for all State and local government functions not assigned to other designated agencies. The Department of Justice, under an agreement with the Department of the Treasury, continues to receive and coordinate the investigation of complaints filed under the Revenue Sharing Act. This entitlement program, which was terminated in 1986, provided civil rights compliance jurisdiction for a wide variety of complaints regarding the use of Federal funds to support various general activities of local governments. In the absence of any similar program of Federal financial assistance administered by another Federal agency, placement of designated agency responsibilities for miscellaneous and otherwise undesignated functions with the Department of Justice is an appropriate continuation of current practice.

The Department of Education objected to the proposed rule's inclusion of the functional area of "arts and humanities" within its responsibilities, and the Department of Housing and Urban Development objected to its proposed designation as responsible for activities relating to rent control, the real estate industry, and housing code enforcement. The Department has deleted these areas from the lists assigned to the Departments of Education and Housing and Urban Development, respectively, and has added a new paragraph (c) to section 35.190, which provides that the Department of Justice may assign responsibility for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section to other appropriate agencies. The Department believes that this approach will provide more flexibility in determining the appropriate agency for investigation of complaints involving those components of State and local governments not specifically addressed by the listings in paragraph (b). As provided in {{35.170 and 35.171, complaints filed with the Department of Justice will be referred to the apropriate agency.

Several commenters proposed a stronger role for the Department of Justice, especially with respect to the receipt and assignment of complaints, and the overall monitoring of the effectiveness of the enforcement activities of Federal agencies. As discussed above, {{35.170 and 35.171 have been revised to provide for referral of complaints by the Department of Justice to appropriate enforcement agencies. Also, language has been added to {35.190(a) of the final regulation stating that the Assistant Attorney General shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of this part.

List of Subjects in 28 CFR Part 35

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings, Civil rights, Drug abuse, Handicapped, Historic preservation, Intergovernmental relations, Reporting and recordkeeping requirements.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 204 of the Americans with Disabilities Act, and for the reasons set forth in the preamble, chapter I of Title 28 of the Code of Federal Regulations is amended by adding a new Part 35 to read as follows:

Part 35 - NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

Subpart A -- General

Sec.

35.101 Purpose.

35.102 Application.

35.103 Relationship to other laws.

35.104 Definitions.

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35.108 - 35.129 [Reserved]

Subpart B -- General Requirements

35.130 General prohibitions against discrimination.

35.131 Illegal use of drugs.

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Subpart C -- Employment

35.140 Employment discrimination prohibited.

35.141 - 35.148 [Reserved]

35.191 - 35.999 [Reserved]

Appendix A to Part 35 -- Preamble to Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services (Published July 26, 1991)

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; Title II, Pub. L. 101-336 (42 U.S.C. 12134).

Subpart A -- General

{35.101 Purpose.

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities.

{35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA, they are not subject to the requirements of this part.

{35.103 Relationship to other laws.

(a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued by Federal agencies pursuant to that title.

(b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

{35.104 Definitions.

For purposes of this part, the term --

Act means the Americans with Disabilities Act (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611).

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

Auxiliary aids and services includes--

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Complete complaint means a written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. 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.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Designated agency means the Federal agency designated under subpart G of this part to oversee compliance activities under this part for particular components of State and local governments.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase *physical or mental impairment* means --

(A) 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;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious 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, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

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

(3) The phrase *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) The phrase *is regarded as having an impairment* means-

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity 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 a public entity as having such an impairment.

(5) The term *disability* does not include --

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Historic preservation programs means programs conducted by a public entity 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 State or local law.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term *illegal use of drugs* does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Public entity means --

(1) Any State or local government;

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

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of

auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

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.

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

{35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, 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 services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

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

(3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self- evaluation.

{35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

{35.107 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

{{35.108 - 35.129 [Reserved]

Subpart B -- General Requirements

{35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability --

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

(ii) Afford a qualified individual with a disability 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 a disability 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 aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

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

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

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in

services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or

substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections --

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting

appropriate to the needs of qualified individuals with disabilities.

(e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal

services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

{35.131 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who--

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

{35.132 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

{35.133 Maintenance of accessible features.

(a) A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

{35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

{35.135 Personal devices and services.

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

{{35.136 - 35.139 [Reserved]

Subpart C -- Employment

{35.140 Employment discrimination prohibited.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.

(b)(1) For purposes of this part, the requirements of title I of the Act, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I.

(2) For the purposes of this part, the requirements of section 504 of the Rehabilitation Act of 1973, as established by the regulations of the Department of Justice in 28 CFR Part 41, as those requirements pertain to employment, apply to employment in any service, program, or activity conducted by a public entity if that public entity is not also subject to the jurisdiction of title I.

{{35.141 - 35.148 [Reserved]

Subpart D -- Program Accessibility

{35.149 Discrimination prohibited.

Except as otherwise provided in {35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

{35.150 Existing facilities.

(a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not --

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with {35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, 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, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) *Methods.* (1) *General.* A public entity 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 other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of {35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of {35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with

disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, 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*. Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum --

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

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

(iii) 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

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

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph shall apply only to those policies and practices that were not included in the previous transition plan.

{35.151 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to the Department of Justice's final rule implementing title III of the ADA, _____ F.R. _____) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at {4.1.3(5) and {4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with {4.1.7 of UFAS or {4.1.7 of ADAAG.

(2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of {35.150.

(e) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

{{35.152 - 35.159 [Reserved]

Subpart E -- Communications

{35.160 General.

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

{35.161 Telecommunication devices for the deaf (TDD's).

Where a public entity communicates by telephone with applicants and beneficiaries, TDD's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.

{35.162 Telephone emergency services.

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

{35.163 Information and signage.

(a) A public entity 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.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

{35.164 Duties.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, 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 subpart would result in such an alteration or such burdens, a public entity 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 disabilities receive the benefits or services provided by the public entity.

{{35.165 - 35.169 [Reserved]

Subpart F - Compliance Procedures

{35.170 Complaints.

(a) *Who may file.* An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.

(b) *Time for filing.* A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A

complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.

(c) *Where to file.* An individual may file a complaint with any agency that he or she believes to be the appropriate agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice for referral as provided in {35.171(a)(2).

{35.171 Acceptance of complaints.

(a) *Receipt of complaints.* (1)(i) Any Federal agency that receives a complaint of discrimination on the basis of disability by a public entity shall promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504.

(ii) If the agency does not have section 504 jurisdiction, it shall promptly determine whether it is the designated agency under subpart G of this part responsible for complaints filed against that public entity.

(2)(i) If an agency other than the Department of Justice determines that it does not have section 504 jurisdiction and is not the designated agency, it shall promptly refer the complaint, and notify the complainant that it is referring the complaint to the Department of Justice.

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

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

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

(b) *Employment complaints.* (1) If a complaint alleges employment discrimination subject to title I of the Act, and

the agency has section 504 jurisdiction, the agency shall follow the procedures issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.

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

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

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

(2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and

specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

{35.172 Resolution of complaints.

(a) The designated agency shall investigate each complete complaint, attempt informal resolution, and, if resolution is not achieved, issue to the complainant and the public entity a Letter of Findings that shall include --

(1) Findings of fact and conclusions of law;

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

(3) Notice of the rights available under paragraph (b) of this section.

(b) If the designated agency finds noncompliance, the procedures in {{35.173 and 35.174 shall be followed. At any time, the complainant may file a private suit pursuant to section 203 of the Act, whether or not the designated agency finds a violation.

{35.173 Voluntary compliance agreements.

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

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

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

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

(1) Be in writing and signed by the parties;

(2) Address each cited violation;

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;

(4) Provide assurance that discrimination will not recur; and

(5) Provide for enforcement by the Attorney General.

{35.174 Referral.

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

{35.175 Attorney's fees.

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

{35.176 Alternative means of dispute resolution.

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

{35.177 Effect of unavailability of technical assistance.

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

{35.178 State immunity.

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

{{35.179 - 35.189 [Reserved]

Subpart G -- Designated Agencies

{35.190 Designated agencies.

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

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

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

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

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

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

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

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

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

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

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

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

{{35.191 - 35.999 [Reserved]

Appendix A to Part 35 -- Preamble to Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services (Published July 26, 1991)

NOTE: For the convenience of the reader, this appendix contains the text of the preamble to the final regulation on nondiscrimination on the basis of disability in State and local government services beginning at the heading "Section-by- Section Analysis" and ending before "List of Subjects in 28 CFR Part 35" (56 FR [INSERT FR PAGE CITATIONS]; July 26, 1991).

Date

Dick Thornburgh

Attorney General

TOWN OF OXFORD
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Office of the First Selectman

AFFIRMATIVE ACTION POLICY STATEMENT

As First Selectman of the Town of Oxford, I recognize the need for Affirmative Action and I pledge my commitment to undertake positive actions to overcome the present effects of past practices or barriers to equal employment opportunity and to achieve the full and fair participation of minorities, women, people with disabilities, older persons, and all other protected groups found to be underutilized in the Town of Oxford's work force or affected by policies having an adverse impact. In the spirit of Executive Order 11, signed by Governor Ella Grasso November 32, 1975, and Executive Order 9 signed by Governor William A. O'Neill on January 3, 1984, I further state that this Town of Oxford will comply with the anti-discrimination provisions of the State and Federal laws and regulations listed at the end of this section.

I recognize the hiring difficulties experienced by minorities, people with disabilities and by many older persons and, where appropriate, I have set goals to overcome the present effects of past discrimination, if any, to achieve the full and fair utilization of such persons in the work force. I further pledge that the Town of Oxford will affirmatively provide services and programs in a fair and impartial manner.

Where adverse impact is identified, the Town of Oxford will: (1) review its personnel policies and procedures to ensure that barriers, which unnecessarily exclude protected classes and practices, which have an illegal discriminatory impact, are identified and eliminated; (2) explore alternative approaches to employ minorities and members of protected classes; (3) administer all terms, conditions, privileges and benefits of the employment process in an equitable manner; and (4) establish procedures for the extra effort that may be necessary to ensure that the recruitment and hiring of protected group members reflect their availability in the job market.

It is the policy of the Town of Oxford to provide equal employment opportunities without consideration of race, color, religion, age, sex, marital status, national origin, genetic information , past/present history of mental disability, ancestry, mental retardation, learning or physical disabilities including but, not limited to blindness, sexual orientation, political belief or criminal record, unless the provisions of Section 46a-60(b), 46a-80(b) and 46a-81(b) of the Connecticut General Statutes are controlling or there is a bonafide occupational qualification excluding persons in one of the above protected groups. This policy applies to all aspects of the employer/employee relationship including, but not limited to, recruitment, hiring, referrals, classifying, advertising, training, upgrading, promotion, benefits, compensation, discipline, layoff and terminations.

The Town of Oxford will implement, monitor and enforce this Affirmative Action Policy Statement in conjunction with the applicable federal and state laws, regulations, executive orders listed below: 13th, 14th and 15th Amendments of the United States Constitution, Civil Rights Act of 1866, 1870,1871, Equal Pay Act of 1963, Title VI and VII of the 1964 United States Civil Rights Act, presidential Executive Orders 11246 amended by 11375, (Nondiscrimination under federal contracts), Act 1 Section 1 and 20 of the Connecticut Constitution, Governor Grasso's Executive Order Number 11, Governor O'Neill Executive Order Number 9, the Connecticut Fair Employment Practices Law (46a-63-64). Discrimination against Criminal Offenders (46a-80). Connecticut General Statutes, Connecticut Code of Fair Accommodations Law (46-63-64), definition of Blind (46a-51), definition of Physically Disabled (46a-51 (15), definition of Mentally Retarded (46a-51 (13), cooperation with the Commission of Human Rights AND Opportunities (46a-77), Sexual Harassment (46-60-(a) Connecticut Credit Discrimination Law (360436 through 439), Title 1 of the State and the Local Fiscal Assistance Act of 1972 and the Americans with Disabilities Act of 1992.

This policy statement will be given annually to all Town of Oxford employees and will also be posted through the Town of Oxford. I also expect each supplier, union, consultant and other entity (s) with which we do business to comply with all applicable State and Federal Equal Opportunity laws and regulations. The Town of Oxford will not knowingly do business with any entity debarred from participation in any federal or state program or found to be in violation of any state or federal anti-discrimination law.

I have assigned the responsibility to achieve the successful implementation of our goals and objectives to Kathleen O'Neil, Oxford Grant Administrator/Writer, (203) 888-2543 x3067.

4/17/08
Date

Mary Ann Drayton-Rogers
Mary Ann Drayton-Rogers
Oxford First Selectman

Executive Order 11246
Section 202 Equal Opportunity Clause
(Contracts/subcontracts above $10,000)

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

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

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

3. The contract will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representative of the contractor's commitment under this section, and employees and applicants for employment.

4. The contractor will comply with all provisions of Executive order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the secretary of labor.

5. The contractor will furnish all information and reports required by executive order 11246 of September 24, 1965, and by rules, regulations and orders of the secretary of labor or pursuant thereto, and will premit access to his books, records, and accounts by the department and secretary of labor for purposes of investigation to ascertain compliance with such rules, regulations and others.

6. In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders this contract may be cancelled, terminated, or suspended in whole or in part and contract may be declared ineligible for further Government contracts in accordance with procedures authorized on executive order 11246 of September 24, 1965, or by rule, regulation, or order of the secretary if labor, or as otherwise provided by law.

7. The contractor will include the provisions of the sentence immediately preceding paragraph one (1) and the provisions of paragraphs one (1) through seven (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of labor issued pursuant to section 204 of executive order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the department may direct as a means of enforcing such provisions, including

sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

Equal Opportunity in Housing

Executive Order 11063
as amended by Executive Order 12259

The Law.

All departments and agencies are directed to take all action necessary and appropriate to prevent discrimination in housing and related facilities owned or operated by the Federal Government or provided with Federal financial assistance and in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans insured or guaranteed by the Federal Government.

Discrimination Prohibited.

Race, Color, Religion, sex, National Origin, Familial Status & Disability.

Coverage.

Housing and related facilities which are owned or operated by the Federal Government or housing and related facilities provided by Federal financial assistance including mortgage insurance and guaranty programs.

Non-Coverage.

Most conventionally financed housing. (However, housing that is covered is such housing constructed on Urban Renewal Land sold by the LPA to the Developer.)

Enforcement.

Basic Enforcement:

1. Cancellation or termination of any agreement of contract.
2. Refrain from extending further aid under any program.
3. Refuse to approve a lending institution or any other lender as a beneficiary under any program.

Exhibit 3.5d

SECTION 3 PLAN

TOWN OF OXFORD

Approved
by the Board of Selectman
in Oxford, Connecticut
on July 6, 2005

The purpose of Section 3 of the Housing and Urban Development Act of 1968 as amended (12. U.S.C. 1701u) (Section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons.

Applicability:

The Section 3 Plan applies to federal activities for housing and community development.

Purpose:

The purpose of this Plan is to provide to the greatest extent feasible economic opportunities for low and very low-income persons in the form of training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance) and community development assistance that is used for the following types of projects:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement)

(ii) Housing construction; and

(iii) Other public construction

Threshold for Training & Employment Opportunities:

These requirements apply to Housing and Community Development activities for which the amount of the assistance received from the Department of Economic and Community Development exceeds $200,000.

Numerical Goals:

At least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and,

At least 3 percent of the total dollar amount of all other Section 3-covered contracts

30% of the funds will be covered under this program if the Town of Oxford hires someone internally to work on this project.

When the town puts the project out to bid in any project over 100,000 the contractor will be covered by the Section 3 Plan.

Therefore, the Town of Oxford pledges to the greatest extent feasible when awarding contracts or conducting training opportunities for new hires resulting from activities or projects subject to the requirements of Section 3 to strive to comply with the goals established in this section. These goals apply to all Section 3-covered assistance awarded in any federal fiscal year. Numerical goals established in this section represent minimum targets.

Training and employment opportunities generated from the expenditure of section 3 activities to section 3 residents will follow the priorities indicated below:

(i) first priority will be given to Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located

(ii) second priority will be given to participants in HUD Youthbuild Programs

(iii) third priority will be given to homeless persons residing in the area or neighborhood in which the Section 3 covered project is located for housing constructed under the Steward B. Mckinney Homeless Assistance Act.

(iv) Fourth priority will be given to other Section 3 residents.

Required Documentation:

Persons requesting consideration for the above preferences will be required to submit certification to demonstrate eligibility.

Acceptable documentation of eligibility includes, but is not limited to the following:

- proof of residency in a public housing development

- evidence of eligibility for section 8 voucher certificate or voucher

- evidence of eligibility for a federally assisted program for the poor (e.g. Jobs, JTPA, Job Corps)

- evidence of eligibility for a State or local assistance program for the poor or receipt of AFDC

- income tax records.

Further, all procurement activity from this award will be conducted competitively consistent with 24 CFR 85.36(c)(2)

Eligibility for Preferences:

Business concerns requesting consideration for the above preferences will be required to submit certification that the business concern is a legitimate Section 3 business.

A Section 3 business concern is defined as business that (1) is 51 percent or more owned by Section 3 residents; or (2) whose permanent, full time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents or (3) that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) and (2) above.

Section 3 Clause

All contracts subject to the Section 3 requirements will include the following clause:

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CPR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 13 5. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed were not filled to circumvent the contractor's obligations under 24 CPR Part 13 5.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Recording and Recordkeeping Requirements

The Town of Oxford will submit a quarterly report to the Department of Economic and Community Development in such form and with such information as the Affirmative Action Office may require for the purpose of determining the effectiveness of this Plan.

Complaint Procedure:

Any individual or business concern alleging that the Town of Oxford or any of its recipients of funds are in violation of the requirements of this Act may file a complaint with the First Selectman or the First Selectman's designated fair housing representative. Complaints filed with the First Selectman's office will follow the internal grievance procedure for fair housing complaints. Complaints may also be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. 20410.

Dated: July 7, 2005

August A. Palmer, III
First Selectman Town of Oxford

TITLE VI--NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Exhibit 3.5.c. Section 3

The Town of Oxford has an approved Section 3 Plan (attached) and demonstrates its commitment to this Plan by including Section 3 requirements in its bid documents. The Oxford Economic Development Commission also provides assistance to businesses that would be eligible Section 3 disadvantaged businesses. The Town has had tremendous success in awarding their contracts to Section 3 contractors.

TOWN OF OXFORD
MaryAnn Drayton-Rogers
First Selectman

S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
Phone: (203) 888-2543 ext. 3012 Fax: (203) 888-2136
E-mail: selectmen@oxford-ct.gov

Office of the First Selectman

AFFIRMATIVE ACTION POLICY STATEMENT

As First Selectman of the Town of Oxford, I recognize the need for Affirmative Action and I pledge my commitment to undertake positive actions to overcome the present effects of past practices or barriers to equal employment opportunity and to achieve the full and fair participation of minorities, women, people with disabilities, older persons, and all other protected groups found to be underutilized in the Town of Oxford's work force or affected by policies having an adverse impact. In the spirit of Executive Order 11, signed by Governor Ella Grasso November 32, 1975, and Executive Order 9 signed by Governor William A. O'Neill on January 3, 1984, I further state that this Town of Oxford will comply with the anti-discrimination provisions of the State and Federal laws and regulations listed at the end of this section.

I recognize the hiring difficulties experienced by minorities, people with disabilities and by many older persons and, where appropriate, I have set goals to overcome the present effects of past discrimination, if any, to achieve the full and fair utilization of such persons in the work force. I further pledge that the Town of Oxford will affirmatively provide services and programs in a fair and impartial manner.

Where adverse impact is identified, the Town of Oxford will: (1) review its personnel policies and procedures to ensure that barriers, which unnecessarily exclude protected classes and practices, which have an illegal discriminatory impact, are identified and eliminated; (2) explore alternative approaches to employ minorities and members of protected classes; (3) administer all terms, conditions, privileges and benefits of the employment process in an equitable manner; and (4) establish procedures for the extra effort that may be necessary to ensure that the recruitment and hiring of protected group members reflect their availability in the job market.

It is the policy of the Town of Oxford to provide equal employment opportunities without consideration of race, color, religion, age, sex, marital status, national origin, genetic information , past/present history of mental disability, ancestry, mental retardation, learning or physical disabilities including but, not limited to blindness, sexual orientation, political belief or criminal record, unless the provisions of Section 46a-60(b), 46a-80(b) and 46a-81(b) of the Connecticut General Statutes are controlling or there is a bonafide occupational qualification excluding persons in one of the above protected groups. This policy applies to all aspects of the employer/employee relationship including, but not limited to, recruitment, hiring, referrals, classifying, advertising, training, upgrading, promotion, benefits, compensation, discipline, layoff and terminations.

The Town of Oxford will implement, monitor and enforce this Affirmative Action Policy Statement in conjunction with the applicable federal and state laws, regulations, executive orders listed below: 13th, 14th and 15th Amendments of the United States Constitution, Civil Rights Act of 1866, 1870,1871, Equal Pay Act of 1963, Title VI and VII of the 1964 United States Civil Rights Act, presidential Executive Orders 11246 amended by 11375, (Nondiscrimination under federal contracts), Act 1 Section 1 and 20 of the Connecticut Constitution, Governor Grasso's Executive Order Number 11, Governor O'Neill Executive Order Number 9, the Connecticut Fair Employment Practices Law (46a-63-64). Discrimination against Criminal Offenders (46a-80). Connecticut General Statutes, Connecticut Code of Fair Accommodations Law (46-63-64), definition of Blind (46a-51), definition of Physically Disabled (46a-51 (15), definition of Mentally Retarded (46a-51 (13), cooperation with the Commission of Human Rights AND Opportunities (46a-77), Sexual Harassment (46-60-(a) Connecticut Credit Discrimination Law (360436 through 439), Title 1 of the State and the Local Fiscal Assistance Act of 1972 and the Americans with Disabilities Act of 1992.

This policy statement will be given annually to all Town of Oxford employees and will also be posted through the Town of Oxford. I also expect each supplier, union, consultant and other entity (s) with which we do business to comply with all applicable State and Federal Equal Opportunity laws and regulations. The Town of Oxford will not knowingly do business with any entity debarred from participation in any federal or state program or found to be in violation of any state or federal anti-discrimination law.

I have assigned the responsibility to achieve the successful implementation of our goals and objectives to Kathleen O'Neil, Oxford Grant Administrator/Writer, (203) 888-2543 x3067.

4/17/08
Date

Mary Ann Drayton-Rogers
Oxford First Selectman

Age Discrimination Act of 1975

(42 U.S.C. Sections 6101-6107)

Section 6101. Statement of purpose

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities r Federal financial assistance.

Section 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 61 title and section 6103(c) of this title, no person in the United States shall, on the basis of age, be exclu participation, in be denied the benefits of, or be subjected to discrimination under, any program or activ Federal financial assistance.

Section 6103. Regulations

(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-di regulations; effective date.

(1) Not later than one year after the transmission of the report required by section 6106(b) of this title, one-half years after November 28, 1975, whichever occurs first, the Secretary of Health and Human Se publish in the Federal Register proposed general regulations to carry out the provisions of section 6102

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period -

(i) the forty-five day period specified in section 6016(e) of this title, and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during v committee of the Congress having jurisdiction over the subject matter involved may conduct hearings w the report which the Commission is required to transmit under section 6106(d) of this title, and with res comments and recommendations submitted by Federal departments and agencies under section 6106(e

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), shall publish in the Federal Register final general regulations to carry out the provisions of section 6106 after taking into consideration any comments received by the Secretary with respect to the regulations under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a of each federal department or agency which extends Federal financial assistance to any program or acti grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to th and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of t provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be c the final general regulations issued by the Secretary, and shall not become effective until approved by t

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section sh before July 1, 1979.

(b) Nonviolative actions; program or activity exemption.

(1) it shall not be a violation of any provision of this chapter, or of any regulation issued under this chap person to take any action otherwise prohibited by the provisions of section 6102 of this title if, in the pr activity involved--

(A) Such action reasonably takes into account age as a factor necessary to the normal operation or the any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this chapter shall not apply to any program or activity established under authority which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) es criteria for participation in age-related terms or describes intended beneficiaries or target groups in sucl

(c) Employment practices and labor-management joint apprenticeship training program exen Discrimination in Employment Act unaffected.

(1) Except with respect to any program or activity receiving Federal financial assistance for public servic under the Workforce Investment Act of 1998 (29 USC 9201 *et seq.*), nothing in this chapter shall be cor authorize action under this chapter by any Federal department or agency with respect to any employme any employer, employment agency, or labor organization, or with respect to any labor-management joi apprenticeship training program.

(2) Nothing in this chapter shall be construed to amend or modify the Age Discrimination in Employmen (29 U.S.C. §§ 621-634) as amended, or to affect the rights of responsibilities of any person or party pu Act.

Section 6104. Enforcement

(a) Methods of achieving compliance with regulations.

The head of any Federal department or agency who prescribes regulations under section 6103 of this tit to achieve compliance with any regulation--

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involve recipient with respect to whom there has been an express finding on the record, after reasonable notice opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Limitations on termination of, or on refusal to grant or to continue, assistance; disbursen withheld funds to achiever agencies.

Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) of this section

limited to the particular political entity or other recipient with respect to which a finding has been made subsection (a)(1) of this section. Any such termination or refusal shall be limited to its effect to the part or activity, or part of such program or activity, with respect to which such finding has been made. No su or refusal shall be based in whole or in part on any finding with respect to any program or activity whicl receive Federal financial assistance. Whenever the head of any Federal department or agency who pres regulations under section 6103 of this title withholds funds pursuant to the subsection (a) of this sectior accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or r private organization or agency, or State or political s ubdivision thereof, which demonstrates the ability goals of the Federal statute authorizing the program or activity while complying with regulations issued 6103 of this title.

(c) Advice as to failure to comply with regulation; determination that compliance cannot be s voluntary means

No action may be taken under subsection (a) of this title until the head of the Federal department or ag has advised the appropriate person of the failure to comply with the regulation involved and has determ compliance cannot be secured by voluntary means.

(d) Report to congressional committees

In the case of any action taken under subsection (a) of this section, the head of the Federal department involved shall transmit a written report of the circumstances and grounds of such action to the committ House of Representative and the Senate having legislative jurisdiction over the program or activity invo action shall take effect until thirty days after the transmission of any such report.

(e) Injunctions; notice of violations; costs; conditions of actions

(1) When any interested person brings an action in any United States district court for the district in wh defendant is found or transacts business to enjoin a violation of this Act by any program or activity rece financial assistance, such interested person shall give notice by registered mail not less than 30 days pr commencement of that action to the Secretary of Health and Human Services, the Attorney General of t States, and the person against whom the action is directed. Such interested person may elect, by a den relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the co including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be the court in which the action will be brought, and whether or not attorney's fees are being demanded in plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is br same alleged violation by the same defendant is the subject of a pending action in any court of the Unit (B) if administrative remedies have not been exhausted.

(f) Exhaustion of administrative remedies

With respect to actions brought for relief based on an alleged violation of the provisions of this chapter, remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrativ during which time the Federal department or agency makes no finding with regard to the complaint, or that the Federal department or agency issues a finding in favor of the recipient of financial assistance, v occurs first.

Section 6105. Judicial review

(a) Revisions of other laws

Any action by any Federal Department or agency under section 6104 of this title shall be subject to sucl review as any otherwise be provided by law for similar action taken by any such department or agency

grounds.

(b) Provisions of Chapter 7 of Title 5; reviewable agency discretion

In the case of any action by any Federal department or agency under section 6104 of this title which is subject to judicial review, any person aggrieved (including any State or political subdivision thereof and either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of Title 5 of this subsection, any such action shall not be purposes of this subsection, any such action shall not be committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

Section 6106. Study of discrimination based on age

(a) Study by Commission on Civil Rights

The Commission on Civil Rights shall (1) undertake a study of unreasonable discrimination based on age and activities receiving Federal financial assistance; and (2) identify with particularity any such federally program or activity in which there is found evidence of persons who are otherwise qualified being, on th excluding from particpation in, denied the benefits of, or subjected to discrimination under such prograr

(b) Public hearings

As part of the study required by this section, the Commission shall conduct public hearings to elicity the interested parties, including Federal departments and agencies, on issues relating to age discrimination and activities receiving Federal financial assistance, and particularly with respect to the reasonableness distinguishing, on the basis of age, among potential participants in, or beneficiaries of, specific federally programs.

(c) Publication of results of analyses, research and studies by independent experts; services or uncompensated personnel

The Commission is authorized to obtain through grant or contract, analyses, research and studies by inc experts of issues relating to age discrimination and to publish the results thereof. For purposes of the st by this section, the Commission may accept and utilize the services of voluntary or uncompensated per regard to the provisions of section 1975d(b) of this title.

(d) Report to President and Congress; copies to affected Federal departments and agencies; i and technical assistance

Not later than two years after November 28, 1975, the Commission shall transmit a report of its finding recommendations for statutory changes (if any) and administrative action, including suggested general the Congress and to the President and shall provide a copy of its report to the head of each Federal dep agency with respect to which the Commission makes findings or recommendations. The Commission is provide, upon request, information and technical assistance regarding its findings and recommendation to the President, and to the heads of Federal departments and agencies for a ninety-day period followin transmittal of its report.

(e) Comments and recommenations of Federal departments and agencies; submission to Pre Congressional committees

Not later than forty-five working days after receiving a copy of the report required by subsection (d) of each Federal department or agency with respect to which the Commission makes findings or recommen submit its comments and recommendations regarding such report to the President and to the Committe Human Resources of the Senate and the Committee on Education and Labor of the House of Representa

(f) Cooperation of Federal departments and agencies with Commission

The head of each Federal department or agency shall cooperate in all respects with the Commission wit the study required by subsection (a) of this section, and shall provide to the Commission such data, rep documents in connection with the subject matter of such study as the Commission may request.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of t

§ 6106a. Reports to the Secretary and Congress

(a) Reports to Secretary

Not later than December 31 of each year (beginning in 1979), the head of each Federal department or a submit to the Secretary of Health and Human Services a report (1) describing in detail the steps taken preceding fiscal year by such department or agency to carry out the provisions of section 6102 of this ti containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis the department or agency is carrying out the provisions of section 6102 of this title.

(b) Reports to Congress

Not later than March 31 of each year (beginning in 1980), the Secretary of Health and Human Services the reports made pursuant to subsection (a) of this section and shall submit them to the Congress, toge evaluation of the performance of each department or agency with respect to carrying out the provisions 6102 of this title.

§ 6107. Definitions

For the purposes of this chapter--

(1) the term "Commission" means the Commission on Civil Rights;

(2) the term "Secretary" means the Secretary of Health and Human Services;

(3) the term "Federal department or agency" means any agency as defined in section 551 of Title 5 and United States Postal Service and the Postal Rate Commission; and

(4)the term "program or activity" means all of the operations of --

(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local go

(ii) the entity of such State or local government that distributes such assistance and each such departm (and each other State or local government entity) to which the assistance is extended, in the case of as State or local government;

(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; o

(ii) a local educational agency (as defined in section 8801 of Title 20), system of vocational education, c system;

"(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship

"(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorsh or

"(II) which is principally engaged in the business of providing education, health care, housing, social ser and recreation; or

"(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assi extended, in the case of any other corporation, partnership, private organization, or sole proprietorship;

"(D) any other entity which is established by two or more of the entities described in paragraph (A), (B)

any part of which is extended Federal financial assistance.

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U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-
TTY:

The Rehabilitation Act of 1973

What is the Rehabilitation Act of 1973?

The Rehabilitation Act of 1973 was the first " rights" legislation to prohibit discrimination against people with disabilities. However, this law applied to programs conducted by Federal agencies, those receiving federal funds, such as colleges participating in federal student loan programs, Federal employment, and employment practices of businesses with federal contracts. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in Title I of the Americans with Disabilities Act.

There are several relevant sections of this act under Title V that require that reasonable accommodations be provided:

- Section 501 - covering Federal government agencies of the Executive branch
- Section 503 - covering Federal government contractors and subcontractors
- Section 504 - covering any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.

Section 501

Section 501 requires affirmative action and prohibits discrimination in employment by Federal agencies of the Executive branch of government. To obtain more information or to file a complaint, applicants or employees should contact the specific agency's Equal Employment Opportunity Office.

Section 503

Section 503 requires affirmative action and prohibits employment discrimination by Federal government contractors and subcontractors with contracts of more than $10,000. This section would include employers with such contracts such as colleges and universities, training programs, and private defense and research companies. For more information or to file a complaint, contact the Office of Federal Contract Compliance Programs in the U.S. Department of Labor at (202) 219-9423 (voice/relay).

Section 504

Section 504 requires that qualified individuals with disabilities shall not be excluded from, denied access to or be subjected to discrimination under any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the U.S. Postal Service.

Each Federal agency has its own sections of section 504 regulations that apply to its own programs, and agencies that provide financial assistance have regulations that cover entities receiving Federal aid. Reasonable accommodations for employees must be provided as well as access to participation in all programs, facilitated communication for people with hearing or vision disabilities, and accessible construction and alterations.

Section 504 has promoted the development of disability support services in colleges and universities. It has also spurred the federal government to write disability employment policies. The "Handbook of Reasonable Accommodations" prepared by the U.S. Office of Personnel Management was the first such attempt to define the types of reasonable accommodations for people with disabilities, but focused primarily on modifications for people with physical or sensory disabilities. Go to the Readings for Employers section of What Can I Read for More Information (for Employers) page for the reference of this publication.

Section 504 does not require special education programming to be developed for students with disabilities but does require an institution to be prepared to make appropriate academic adjustments and reasonable modifications to policies and practices to allow for full participation of students with disabilities. Persons diagnosed with a psychological or psychiatric disabilities are protected by Section 504 if their condition substantially limits a major life activity such as learning, working, speaking, writing, walking, seeing, and hearing. Go to the Legal Issues section of the What Can I Read for More Information (for Educators) page to review a list of readings on the ADA and Section 504 as it applies to higher education.

Who is responsible for enforcement of Section 504?
Each agency is responsible for enforcing its own regulations, but Section 504 may also be enforced through private lawsuits without a requirement for a 'right to sue' letter. For information on filing complaints, contact the Disability Rights Section, Civil Rights Division of the U.S. Department of Justice at (800) 514-0301 (voice) or (800) 514-0383 (TDD).

Basic information about
ADA & Term Definitions | EEOC Guidance
ADA's Mandate | Act of 1973 | Article: ADA & Section 504 | FMLA

Reasonable Accommodations Home Page

Section 503 of the Rehabilitation Act of 1973, as amended

---DISCLAIMER---

29 USC Sec. 793 (1993)

- **UNITED STATES CODE**
- **TITLE 29**
- **CHAPTER 16**
- **SUBCHAPTER V**

§ 793. Employment under Federal contracts

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

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

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

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

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

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

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

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

- (d)Standards used in determining violation of section

- The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

- (e) Avoidance of duplicative efforts and inconsistencies

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

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200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USA-DOL
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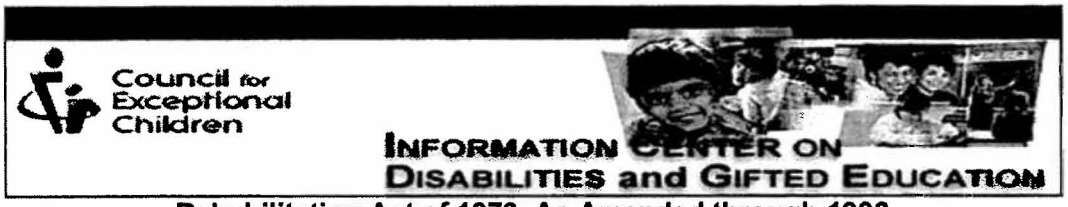

Rehabilitation Act of 1973, As Amended through 1998

Nondiscrimination Under Federal Grants and Programs

Sec. 504.(a) No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulations may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) For the purposes of this section, the term "program or activity" means all of the operations of -

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 14101 of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship -

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on the date of the enactment of this subsection.

(d) The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

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MUNICIPAL GRIEVANCE PROCEDURE

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, programs, or benefits by the Town of Oxford.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint will be available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his designee as soon as possible but no later than 60 calendar days after the alleged violation to:

Kathleen O'Neil
ADA COMPLIANCE COORDINATOR
486 Oxford Road
Oxford, CT 06478
(203) 888-2543 X3067
grantadmin@oxford-ct.gov

Within 15 calendar days after receipt of the conplaint, Kathleen O'Neil will meet with the complainant to discuss the complaint and possible solutions. Within 15 calendar days after the meeting, Kathleen O'Neil will respond in writing, and where appropriate in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the Town of Oxford and after options for substantive resolution of the complaint.

If the response by Kathleen O'Neil does is not satisfactorily resolve the issue, the complaint and/or his/her designee may appeal the decision of the ADA coordinator within 15 calendar days after receipt of the response to the First Selectman or her designee.

Within 15 calendar days after the receipt of the appeal, the First Selectman or her designee will meet the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting with the First Selectman or her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by Kathleen O'Neil, appeals to the First Selectman or her designee, and responses from the ADA coordinator and First Selectman or her designee will be kept by the Town of Oxford for at least three years.

TOWN OF OXFORD

ADA NOTICE

The Town of Oxford does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services, or activities. The Town of Oxford does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided by Title II of the Americans with Disabilities Act of 1990.

Questions, concerns, complaints, or requests for additional information regarding the ADA may be forwarded to Kathleen O'Neil designated ADA Compliance Coordinator.

Name: Kathleen O'Neil

Title: ADA Compliance Coordinator

Office Address: 486 Oxford Road
Oxford, CT 06478

Phone Number: (203) 888-2543 x3067

Email Address: grantadmin@oxford-ct.gov

Days/Hours Available: Monday through Thursday from 9:00 a.m. to 5:00 p.m.

Individuals who need auxiliary aids for effective communication in programs and services of the Town of Oxford are invited to make their needs and preferences known to the ADA Compliance Coordinator.

This notice is available upon request in large print, on audio tape, and in Braille, from the ADA Compliance Coordinator.

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Section 109 of Title I of the Housing Community Development Act of 197

24 CFR 6

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TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 6--NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOU COMMUNITY DEVELOPMENT ACT OF 1974

Subpart A--General Provisions

Sec.
6.1 Purpose.
6.2 Applicability.
6.3 Definitions.
6.4 Discrimination prohibited.
6.5 Discrimination prohibited--employment.
6.6 Records to be maintained.

Subpart B--Enforcement

6.10 Compliance information.
6.11 Conduct of investigations.
6.12 Procedure for effecting compliance.
6.13 Hearings and appeals.

Authority: 42 U.S.C. 3535(d) 42 U.S.C. 5309.

Source: 64 FR 3797, Jan. 25, 1999, unless otherwise noted.

Subpart A--General Provisions

Sec. 6.1 Purpose.

The purpose of this part is to implement the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. Section 109 does not directly prohibit discrimination on the bases of age or disability, and the regulations in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, section

109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (/ Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement th Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

Sec. 6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under title I of the Housing and Community Development Act of 1974, including Community Development Block Gra Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Develo Initiative Grants; and Special Purpose Grants.
(b) The provisions of this part and sections 104(b)(2) and 109 of Title I that relate to discrimination on the basis of race shall not apply to the provision of Federal financial assistance by grantees under this title to the Hawaiian Homelands (42 U.S.C. 5309).
(c) The provisions of this part and sections 104(b)(2) and 109 of Title I that relate to discrimination on the basis of race and national origin shall not apply to the provision of Federal financial assistance to grant recipients under the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101). See also, 24 CFR 1003.601(a

Sec. 6.3 Definitions.

The terms Department, HUD, and Secretary are defined in 24 CFR part 5. Other terms used in this part 6 are defined as follows:
Act means the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5320).
Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.
Award Official means the HUD official who has been delegated the Secretary's authority to implement a Title I funded program and to mal grants under that program.
Complete complaint means a written statement that contains the complainant's name and address, identifies the Recipient against which the complaint is made, and describes the Recipient's alleged discriminatory action in sufficient detail to inform HUD of the nature and date of the alleged violation of section 109. It shall be signed by the complainant or by someone authorized to do so on his or her behal Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.
Federal financial assistance means: (1) Any assistance made available under title I of the Housing and Community

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Development Act of 1974, as amended, and includes income generated such assistance, and any grant, loan, contract, or any other

arrangement, in the form of:
(i) Funds;
(ii) Services of Federal personnel; or
(iii) Real or personal property or any interest in or use of such property, including:
(A) Transfers or leases of the property for less than fair market value or for reduced consideration; and
(B) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.
(2) Any assistance in the form of proceeds from loans guaranteed under section 108 of the Act, but does not include assistance made available through direct Federal procurement contracts or any other contract of insurance or guaranty.
Program or activity (funded in whole or in part) means all of the operations of--
(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or
(ii) The entity of a State or local government that distributes Federal financial assistance, and each department or agency (and each State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
(2)(i) A college, university, or other post-secondary institution, or a public system of higher education; or
(ii) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education or other school system;
(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--
(A) If assistance is extended to the corporation, partnership, private organization, or sole proprietorship as a whole; or
(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
(4) Any other entity that is described in paragraphs (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.
Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision; any public or private agency, institution, organization, or other entity; or any individual, in any State, to whom Federal financial assistance is extended, directly or through another Recipient, for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign, or transferee thereof.
Recipient does not include any ultimate beneficiary under any program activity.
Responsible Official means the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.
Section 109 means section 109 of the Housing and Community Development Act of 1974, as amended.
Title I means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321).

Sec. 6.4 Discrimination prohibited.

(a) Section 109 requires that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance, on the grounds of race, color, national origin, religion, or sex.
(1) A Recipient under any program or activity to which this part applies may not, directly or through contractual, licensing, or other arrangements, take any of the following actions on the grounds of race, color, national origin, religion, or sex:
(i) Deny any individual any facilities, services, financial aid, or other benefits provided under the program or activity;
(ii) Provide any facilities, services, financial aid, or other benefits that are different, or are provided in a different

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form, from that provided to others under the program or activity;
(iii) Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to the receipt of any service or benefit under the program or activity;
(iv) Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions that the individual mu meet in order to be provided any facilities, services, or other benefit provided under the program or activity;
(vi) Deny an individual an opportunity to participate in a program or activity as an employee;
(vii) Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;
(viii) Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;
(ix) Use criteria or methods of administration that have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or
(x) Deny a person the opportunity to participate as a member of planning or advisory boards.
(2) In determining the site or location of housing, accommodations, or facilities, a Recipient may not make selections that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, religion, or sex. The Recipient may not make selections that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of section 109 and of this part 6.
(3)(i) In administering a program or activity in which the Recipient has discriminated on the grounds of race, color, national origin,

religion or sex, the Recipient must take any necessary steps to overcon the effects of prior discrimination.
(ii) In the absence of discrimination, a Recipient, in administering a program or activity, may take any steps necessary to overcome the effects of conditions that resulted in limiting participation by persons of a particular race, color, national origin, religion, or sex.
(iii) After a finding of noncompliance, or after a Recipient has reasonable cause to believe that discrimination has occurred, a Recipient shall not be prohibited by this section from taking any action eligible under subpart C of 24 CFR part 570 to ameliorate an imbalance in benefits, services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy discriminatory practices or usage.
(iv)(A) Notwithstanding anything to the contrary in this part, nothing contained in this section shall be construed to prohibit any Recipient from maintaining or constructing separate living facilities or restroom facilities for the different sexes in order to protect personal privacy or modesty concerns. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can, in the interest of personal privacy or modesty, only be performed by a member of the same sex as those receiving the services.
(B) Section 109 of the Act does not directly prohibit discrimination on the basis of age or disability, but directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs and activities. Accordingly, for programs or activities receiving Federal financial assistance, the regulations in this part 6 apply to discrimination on the bases of race, color, national origin, religion, or

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sex; the regulations at 24 CFR part 8 apply to discrimination on the basis of disability; and the regulations at 24 CFR part 146 apply to discrimination on the basis of age.
(b) [Reserved]

Sec. 6.5 Discrimination prohibited--employment.

(a) General. A Recipient may not, under any program or activity funded in whole or in part with Federal financial assistance, directly or through contractual agents or other arrangements including contract and consultants, subject a person to discrimination in the terms and conditions of employment. Terms and conditions of employment include advertising, interviewing, selection, promotion, demotion, transfer, recruitment and advertising, layoff or termination, pay or other compensation, including benefits, and selection for training.
(b) Determination of compliance status. The Assistant Secretary will follow the procedures set forth in this part and 29 CFR part 1691 and look to the substantive guidelines and policy of the Equal Employment Opportunity Commission when reviewing employment practices under S 109.

Sec. 6.6 Records to be maintained.

(a) General. Recipients shall maintain records and data as required by 24 CFR 91.105, 91.115, 570.490, and 570.506.
(b) Employment. Recipients shall maintain records and data as required by the Equal Employment Opportunity Commission at 29 CFR 1600.
(c) Recipients shall make available such records and any supporting documentation upon request of the Responsible Official.

(Approved by the Office of Management and Budget under control num 2506-0117 and 2506-0077.)

Subpart B--Enforcement

Sec. 6.10 Compliance information.

(a) Cooperation and assistance. The Responsible Official and the Award Official will provide assistance and guidance to Recipients to help them comply voluntarily with this part.
(b) Access to data and other sources of information. Each Recipient shall permit access by authorized representatives of HUD to its facilities, books, records, accounts, minutes and audio tapes of meetings, personnel, computer disks and tapes, and other sources of information as may be pertinent to a determination of whether the Recipient is complying with this part. Where information required of a Recipient is in the exclusive possession of any other agency, institution, or person, and that agency, institution, or person fails or refuses to furnish this information, the Recipient shall so certify in any requested report and shall set forth what efforts it has made to obtain the information. Failure or refusal to furnish pertinent information (whether maintained by the Recipient or some other agenc institution, or person) without a credible reason for the failure or refusal will be considered to be noncompliance under this part.
(c) Compliance data. Each Recipient shall keep records and submit to the Responsible Official, timely, complete, and accurate data at such times and in such form as the Responsible Official may determine to be necessary to ascertain whether the Recipient has complied or is complying with this part.
(d) Notification to employees, beneficiaries, and participants. Each Recipient shall make available to employees, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the program or activity under which the Recipient receives Federal financial assistance and mal such information available to them in such manner as the Responsible Official finds necessary to apprise such persons of the protections against discrimination assured them by Section 109 and this part.

Sec. 6.11 Conduct of investigations.

(a) Filing a complaint--(1) Who may file. Any person who believes that he or she has been subjected to discrimination prohibited by this part may file, or may have an authorized representative file on his or her behalf, a complaint with the Responsible Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that

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class or who is the authorized representative of a member of that class may file a complaint with the Responsible Official.
(2) Confidentiality. Generally, the Responsible Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise. However, an exception to maintaining confidentiality of the identity of the person may be required to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.
(3) When to file. Complaints shall be filed within 180 days of the alleged act of discrimination, unless the Responsible Official waives this time limit for good cause. For purposes of determining when a complaint is filed under this part, a complaint mailed to the Responsible Official via the U.S. Postal Service will be deemed filed on the date it is postmarked. A complaint delivered to the Responsible Official in any other manner will be deemed filed on the date it is received by the Responsible Official.
(4) Where to file complaints. Complaints must be in writing, signed, addressed to the Responsible Official, and filed with (mailed to or otherwise delivered to) the Office of Fair Housing and Equal Opportunity at any HUD Office.
(5) Content of complaints. Each complaint should contain the complainant's name, address, and phone number; a description or nam available, of the Recipient alleged to have violated this part; an address where the violation occurred; and a description of the Recipient's alleged discriminatory action in sufficient detail to inform the Responsible Official of the nature and date of the alleged violation of this part.
(6) Amendments to complaints. Amendments to complaints, such as clarification and amplification of allegations in a complaint or the addition of other Recipients, may be made by the complainant or the complainant's authorized representative at any time while the complain is being considered, and any amendment shall be deemed to be made a the original filing date.
(7) Notification. To the extent practicable, the Responsible Official will notify the complainant and the Recipient of the Responsible Official's receipt of a complaint within 10 calendar days of receipt of a complete complaint. If the Responsible Official receives a complaint that is not complete, the Responsible Official will notify the complainant and specify the additional information that is needed to make the complaint complete. If the complainant fails to complete the complaint, the Responsible Official will close the complaint without prejudice and notify the complainant. When a complete complaint has b received, the Responsible Official, or his or her designee, will assess the complaint for acceptance, rejection, or referral to an appropriate Federal agency within 20 calendar days.
(8) Resolution of complaints. After the acceptance of a complete complaint, the Responsible Official will investigate the complaint, attempt informal resolution, and, if resolution is not achieved, the Responsible Official will notify the Recipient and complainant, to the extent practicable within 180 days of the receipt of the complete complaint, of the results of the investigation in a letter of findings sent by certified mail, return receipt requested, containing the following:

(i) Findings of fact and a finding of compliance or noncompliance;
(ii) A description of an appropriate remedy for each violation believed to exist; and
(iii) A notice of the right of the Recipient and the complainant to request a review of the letter of findings by the Responsible Official. A copy of the final investigative report will be made available upon request.
(b) Compliance reviews--(1) Periodic compliance reviews. The Responsible Official may periodically review the practices of Recipients to determine whether they are complying with this part and may condu on-site reviews. The Responsible Official will initiate an on-site review by sending to the Recipient a letter advising the Recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time before a final determination, to submit information

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that explains, validates, or otherwise addresses the practices under review. In addition, the Award Official will include, in normal program compliance reviews and monitoring procedures, appropriate actions to review and monitor compliance with general or specific program requirements designed to implement the requirements of this part.
(2) Time period of the review. (i) For the Entitlement program, compliance reviews will cover the three years before the date of the review.
(ii) For the Urban Development Action Grant (UDAG) program, the compliance review is applicable only to UDAG loan repayments or other payments or revenues classified as program income. UDAG repayments other payments or revenues classified as miscellaneous revenue are no subject to compliance review under this part. (See 24 CFR 570.500(a).) The compliance review will cover the time period that program income being repaid.
(iii) For the State and HUD-Administered Small Cities programs, the compliance review will cover the four years before the date of the review.
(iv) For all other programs, the time period covered by the review will be four years before the date of the review.
(v) On a case-by-case basis, at the discretion of the Responsible Official, the above time frames for review can be expanded where facts or allegations warrant further investigation.
(3) Early compliance resolution. On the last day of the on-site visit, after the compliance review, the Recipient will be given an opportunity to supplement the record. Additionally, a prefinding conference may be held and a summary of the proposed findings may b presented to the Recipient. In those instances where the issue(s) cannc be resolved at a prefinding conference or with the supplemental information, a meeting will be scheduled to attempt a voluntary settlement.
(4) Notification of findings. (i) The Assistant Secretary will notify the Recipient of Federal financial assistance of the results of the compliance review in a letter of findings sent by certified mail, return receipt requested.
(ii) Letter of findings. The letter of findings will include the findings of fact and the conclusions of law; a description of a remedy

for each violation found; and a notice that a copy of HUD's final report concerning its compliance review will be made available, upon request, to the Recipient.
(c) Right to a review of the letter of findings. (1) Within 30 days of receipt of the letter of findings, any party may request that a review be made of the letter of findings, by mailing or delivering to the Responsible Official, Room 5100, Office of Fair Housing and Equal Opportunity, HUD, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified.
(2) The Responsible Official will send by certified mail, return receipt requested, a copy of the request for review to all parties. Parties other than the party requesting review and HUD shall have 20 days from receipt to respond to the request for review.
(3) The Responsible Official will either sustain or modify the letter of findings or require that further investigation be conducted, within 60 days of the request for review. The Responsible Official's decision shall constitute the formal determination of compliance or noncompliance.
(4) If no party requests that the letter of findings be reviewed, the Responsible Official, within 14 calendar days of the expiration of the time period in paragraph (a)(9)(i) of this section, will send a formal written determination of compliance or noncompliance to all parties.
(d) Voluntary compliance time limits. The Recipient will have 10 calendar days from receipt of the letter of findings of noncompliance, or such other reasonable time as specified in the letter, within which to agree, in writing, to come into voluntary compliance or to contact the Responsible Official for settlement discussions. If the Recipient fails to meet this deadline, HUD will proceed in accordance with Secs. 6.12 and 6.13.
(e) Informal resolution/voluntary compliance--(1) General. It is the policy of

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HUD to encourage the informal resolution of matters. A complaint or a compliance review may be resolved by informal means at any time. If a letter of findings is issued, and the letter makes a finding of noncompliance, the Responsible Official will attempt to resolve the matter through a voluntary compliance agreement.
(2) Objectives of informal resolution/voluntary compliance. In attempting informal resolution, the Responsible Official will attempt to achieve a just resolution of the matter and to obtain assurances, where appropriate, that the Recipient will satisfactorily remedy any violations of the rights of any complainant, and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. If a finding of noncompliance has been made, the terms of such an informa resolution shall be reduced to a written voluntary compliance agreemer signed by the Recipient and the Responsible Official, and be made part of the file. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public.
(3) Right to file a private civil action. At any time in the process, the complainant has the right to file a private civil action.

If the complainant does so, the Responsible Official has the discretion to administratively close the investigation or continue the investigation, if he or she decides that it is in the best interests of the Department to do so. If the Responsible Official makes a finding of noncompliance and an agreement to voluntarily comply is not obtained from the Recipient, the procedures at Secs. 6.12 and 6.13 for effecting compliance shall be followed.
(f) Intimidatory or retaliatory acts prohibited. No Recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, compliance review, proceeding, or hearing under this part.

Sec. 6.12 Procedure for effecting compliance.

(a) Whenever the Assistant Secretary determines that a Recipient of Federal financial assistance has failed to comply with Section 109(a) or this part and voluntary compliance efforts have failed, the Secretary will notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and will request that the Governor or the Chief Executive Officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or the Chief Executive Officer fails or refuses to secure compliance, the Secretary will:
(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;
(2) Exercise the powers and functions provided by Title VI;
(3) Terminate or reduce payments under Title I, or limit the availability of payments under Title I to programs or activities not affected by the failure to comply; or
(4) Take such other actions as may be provided by law, including but not limited to, the initiation of proceedings under 24 CFR part 24 or any applicable proceeding under State or local law.
(b) Termination, reduction, or limitation of the availability of Title I payments. No order terminating, reducing, or limiting the availability of Title I payments under this part shall become effective until:
(1) The Secretary has notified the Governor of the State or the Chief Executive Officer of the unit of general local government of the Recipient's failure to comply in accordance with paragraph (a) of this section and of the termination, reduction or limitation of the availability of Title I payments to be taken;
(2) The Secretary has determined that compliance cannot be secured by voluntary means;
(3) The Recipient has been extended an opportunity for a hearing in accordance with Sec. 6.13(a); and
(4) A final agency notice or decision has been rendered in accordance with paragraph (c) of this section or 24 CFR part 180.

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(c) If a Recipient does not respond to the notice of opportunity for a hearing or does not elect to proceed with a hearing within 20 days of the issuance of the Secretary's actions listed in paragraphs (b)(1), (2)

and (3) of this section, then the Secretary's approval of the termination, reduction or limitation of the availability of Title I payments is considered a final agency notice and the Recipient may see judicial review in accordance with section 111(c) of the Act.

Sec. 6.13 Hearings and appeals.

(a) When a Recipient requests an opportunity for a hearing, in accordance with Sec. 6.12(b)(3), the General Counsel will follow the notification procedures set forth in 24 CFR 180.415. The hearing, and any petition for review, will be conducted in accordance with the procedures set forth in 24 CFR part 180.
(b) After a hearing is held and a final agency decision is rendered under 24 CFR part 180, the Recipient may seek judicial review in accordance with section 111(c) of the Act.

Content updated November 1, 2002

U.S. Department of Housing and Urban Development
451 7th Street S.W., Washington, DC 20410
Telephone: (202) 708-1112 TTY: (202) 708-1455
Find the address of a HUD office near you

TOWN OF OXFORD
MaryAnn Drayton-Rogers
First Selectman

S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
Phone: (203) 888-2543 ext. 3012 Fax: (203) 888-2136
E-mail: selectmen@oxford-ct.gov

Office of the First Selectman

AFFIRMATIVE ACTION POLICY STATEMENT

As First Selectman of the Town of Oxford, I recognize the need for Affirmative Action and I pledge my commitment to undertake positive actions to overcome the present effects of past practices or barriers to equal employment opportunity and to achieve the full and fair participation of minorities, women, people with disabilities, older persons, and all other protected groups found to be underutilized in the Town of Oxford's work force or affected by policies having an adverse impact. In the spirit of Executive Order 11, signed by Governor Ella Grasso November 32, 1975, and Executive Order 9 signed by Governor William A. O'Neill on January 3, 1984, I further state that this Town of Oxford will comply with the anti-discrimination provisions of the State and Federal laws and regulations listed at the end of this section.

I recognize the hiring difficulties experienced by minorities, people with disabilities and by many older persons and, where appropriate, I have set goals to overcome the present effects of past discrimination, if any, to achieve the full and fair utilization of such persons in the work force. I further pledge that the Town of Oxford will affirmatively provide services and programs in a fair and impartial manner.

Where adverse impact is identified, the Town of Oxford will: (1) review its personnel policies and procedures to ensure that barriers, which unnecessarily exclude protected classes and practices, which have an illegal discriminatory impact, are identified and eliminated; (2) explore alternative approaches to employ minorities and members of protected classes; (3) administer all terms, conditions, privileges and benefits of the employment process in an equitable manner; and (4) establish procedures for the extra effort that may be necessary to ensure that the recruitment and hiring of protected group members reflect their availability in the job market.

It is the policy of the Town of Oxford to provide equal employment opportunities without consideration of race, color, religion, age, sex, marital status, national origin, genetic information , past/present history of mental disability, ancestry, mental retardation, learning or physical disabilities including but, not limited to blindness, sexual orientation, political belief or criminal record, unless the provisions of Section 46a-60(b), 46a-80(b) and 46a-81(b) of the Connecticut General Statutes are controlling or there is a bonafide occupational qualification excluding persons in one of the above protected groups. This policy applies to all aspects of the employer/employee relationship including, but not limited to, recruitment, hiring, referrals, classifying, advertising, training, upgrading, promotion, benefits, compensation, discipline, layoff and terminations.

The Town of Oxford will implement, monitor and enforce this Affirmative Action Policy Statement in conjunction with the applicable federal and state laws, regulations, executive orders listed below: 13th, 14th and 15th Amendments of the United States Constitution, Civil Rights Act of 1866, 1870,1871, Equal Pay Act of 1963, Title VI and VII of the 1964 United States Civil Rights Act, presidential Executive Orders 11246 amended by 11375, (Nondiscrimination under federal contracts), Act 1 Section 1 and 20 of the Connecticut Constitution, Governor Grasso's Executive Order Number 11, Governor O'Neill Executive Order Number 9, the Connecticut Fair Employment Practices Law (46a-63-64). Discrimination against Criminal Offenders (46a-80). Connecticut General Statutes, Connecticut Code of Fair Accommodations Law (46-63-64), definition of Blind (46a-51), definition of Physically Disabled (46a-51 (15), definition of Mentally Retarded (46a-51 (13), cooperation with the Commission of Human Rights AND Opportunities (46a-77), Sexual Harassment (46-60-(a) Connecticut Credit Discrimination Law (360436 through 439), Title 1 of the State and the Local Fiscal Assistance Act of 1972 and the Americans with Disabilities Act of 1992.

This policy statement will be given annually to all Town of Oxford employees and will also be posted through the Town of Oxford. I also expect each supplier, union, consultant and other entity (s) with which we do business to comply with all applicable State and Federal Equal Opportunity laws and regulations. The Town of Oxford will not knowingly do business with any entity debarred from participation in any federal or state program or found to be in violation of any state or federal anti-discrimination law.

I have assigned the responsibility to achieve the successful implementation of our goals and objectives to Kathleen O'Neil, Oxford Grant Administrator/Writer, (203) 888-2543 x3067.

4/17/08
Date

Mary Ann Drayton-Rogers /ems
Mary Ann Drayton-Rogers
Oxford First Selectman

TOWN OF OXFORD

MaryAnn Drayton-Rogers
First Selectman

S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
Phone: (203) 888-2543 ext. 3012 Fax: (203) 888-2136
E-mail: selectmen@oxford-ct.gov

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I have assigned the responsibility to achieve the successful implementation of our goals and objectives to Kathleen O'Neil, Grant Admin/Writer, (203) 888-2543 x 3067, grantadmin@oxford-ct.gov

5/29/08
Date

MaryAnn Drayton-Rogers
Oxford First Selectman

TOWN OF OXFORD

S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
www.Oxford-CT.gov

Office Of The First Selectman

FAIR HOUSING PROCLAMATION

Whereas, The month of April is recognized nationally as Fair Housing month; and

Whereas, Fair Housing is important to ensure all Americans the right to live in a decent, safe and sanitary environment; and

Whereas, Fair Housing is the legal right of every American; and

Whereas, The Town of Oxford is proud to participate in the recognition and support of Fair Housing Month.

Now, Therefore, I, August A. Palmer, III, First Selectman of Oxford, do proclaim April to be celebrated as Fair Housing Month in the Town of Oxford, Connecticut.

Dated this 6th day of July, 2005

August A. Palmer, III
First Selectman

AFFIRMATIVE FAIR HOUSING PLAN
TOWN OF OXFORD

Approved
by Resolution of the Board of Selectman
of the Town of Oxford, Connecticut
on Wednesday July 6th, 2005

WHEREAS, the Congress of the United States in 1866 (the 1866 Civil Rights Act, 42 U.S.C. 1982) has declared that all citizens of the United States shall have the same rights to inherit, purchase, lease, sell, hold and convey real and personal property;

WHEREAS, the Congress of the United States has further declared by the Civil Rights Act of 1968, known as the Fair Housing Act (P.L. 90-284) (18 U.S.C. 245) (hereinafter called the "Act" that it is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the United States, thereby prohibiting discrimination by reason of race, color, religion, national origin, sex, national origin, ancestry, sexual orientation, creed, marital status, lawful source of income, learning disability, mental or physical disability, including but not limited to blindness, age, or because the individual has children in the sale or rental of housing; and

WHEREAS, Section 808 and 809 of the ACT provide that the authority and responsibility for administering the Act shall be vested in the Secretary of Housing and Urban Development (hereinafter called the "Secretary") and the Secretary is required to cooperate with and render technical assistance to private agencies, groups and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices and to undertake conciliatory activities which will further the purpose of fair housing and to work out programs of voluntary compliance with the cooperation and advice of the housing industry and other interested persons; and

WHEREAS, the Town of Oxford believes that the above-stated national policy of fair housing can effectively be promoted through programs of affirmative action in the private housing industry and markets; and

WHEREAS, the Town of Oxford believes it desirable to establish a local Fair Housing Plan for the purpose of effectuating the requirements of all applicable fair housing laws;

NOW, THEREFORE, in order to encourage public and private cooperation in achieving fair housing through affirmative action and other efforts, the Town of Oxford—a non-entitlement, **limited affordability rural community** with a population of approximately 10,000--establishes the following Affirmative Fair Housing Plan ("Plan"):

1. The Town of Oxford pledges to take positive steps to affirmatively and actively seek out opportunities to prohibit discrimination in housing and in our public construction projects on the basis of a person's race, creed, color, national origin, ancestry, sex, marital status, age,

lawful source of income, familiar status, physical or mental disability or sexual orientation. We also will seek to promote racial and economic integration and affirmatively further fair housing in our housing programs.

2. We will seek to attract prospective buyers and tenants of all majority and minority groups in Oxford. Groups not normally likely to apply for housing in Oxford include persons of minority race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familiar status, physical or mental disability or sexual orientation. We will actively seek affirmative marketing strategies to inform members of these groups of the available housing and make them feel welcome to apply. We are committed to providing fair housing training on an annual basis for the Fair Housing Officer. These strategies are consistent with the requirements of the Department's Fair Housing Regulations and Affirmative Fair Housing Marketing and Selection Procedures Manual.

3. The person in Oxford assigned fair housing responsibilities shall be the First Selectman, or his or her designated staff representative. The First Selectman can be reached at:

S. B. Church Memorial Town Hall
Oxford, CT 06478
203-888-2543, x3034
203-888-2136 (fax)
selectmen@oxford-ct.gov

4. The Fair Housing Officer or his or her designated representative will be responsible for the following primary duties:

*Hearing, evaluating, recording, and resolving complaints locally wherever possible
*Recording all complaints for inspection by state authorities
*When not feasible locally, to expeditiously forward all complaints with accompanying information to the appropriate state authorities for resolution
*Expeditious action in resolving complaints
*Affirmative training and education to town employees and local stakeholders (bankers, mortgage lenders, housing authorities) relating to fair housing

Training and education shall include but not be limited to gathering material from organizations and agencies involved with fair housing such as DECD, CHRO, HUD, and private not-for-profits and for distributing these materials to all town staff who have direct contact with the public regarding housing, community development, social services, or public safety.

Person responsible for action: Fair Housing Officer
Date accomplished by: April, 2006, and at a minimum, yearly thereafter
Records to be maintained by: Fair Housing Officer or His/Her Designated Staff Representative
Place where records will be kept:
Original Copy: Board of Selectman's Office; Responsible person: BOS Secretary
Second Copy: Grant Administration Office,
Civil Rights Files for Small Cities Oxford Senior Center Project
Responsible person: Grant Administrator

4. Our discrimination procedure will provide for the expeditious resolution of complaints to ensure that legal options for filing complaints with enforcement agencies are not foreclosed. (At present there are no known complaints registered against or with the Town of Oxford.)

5. The Procedure for Complaints shall be:

All complaints will be referred to the Fair Housing Officer
A file of complaints will be kept in the First Selectman's office by the BOS secretary
Complaints will be handled expeditiously and resolved locally where possible
All locally unresolveable complaints will be expeditiously forwarded for resolution to appropriate state authorities
As part of Fair Housing Month, the Fair Housing Officer or his or her designated representative will prepare a progress report on the number and character and resolution of complaints filed by housing applicants within the immediately prior year. The report shall include information on the applicant, the nature of the complaint, actions taken, and the status of each complaint.

To affirmatively ensure that fair housing is available in the rural limited affordability community of Oxford, the Town pledges:

1. To seek general compliance with all Fair Housing Laws, including, but not limited to, Title VITI of the Civil Rights Act of 1968, Title V of the National Housing Act (as amended), and the Connecticut Public Accommodations Act (Title 53 of Connecticut General Statutes).

2. To identify and work with those persons, groups or agencies (realtors, lenders, bankers, community groups, government officials) that have the resources and ability to significantly impact the achievement of the fair housing objectives set forth above.

3 To promote fair housing in the Town by dissemination of relevant information as to fair housing requirements to all persons having a direct involvement and interest in the provision of housing, including Realtors, leading institutions, developers, apartment and other rental unit owners and affected Town agencies. More specifically it is intended that workshops and other educational sessions be held for the following purposes, among others:

a) to review equal opportunity lending programs with local lending institutions;

b) to review with Realtors, developers and multi-unit dwelling owners or managers the requirements of federal and state Fair Housing Laws affecting them, and to offer guidance or assistance to such persons as to affirmative marketing and other techniques;

c) to hold at least one annual general public information meeting to review housing requirements and impact;

d) to assist affected Town agencies in the administration of Town programs or requirements which impact housing opportunities; and

e) to encourage generally greater understanding and familiarity with both the objective of equal housing opportunity and the various techniques by which such objective may be furthered

Further, by Resolution of the Board of Selectman, the Town of Oxford pledges at a minimum to pursue the following action steps to actively affirm fair housing in this community:

1. Action Step #1: Item 3 from Fair Housing Action Step List: Training

The Fair Housing Officer of Oxford or his or her designated staff representative will accomplish action step #3 of the 2005 Grant Management Guidelines for Recipients of CDBG Funds' Fair Housing Action Plan Instructions:

The Fair Housing Officer of the Town of Oxford or his or her designated staff representative will gather information from organizations and agencies involved with fair housing practices and rules (such as DECD, CHRO, HUD and private not-for-profit fair housing agencies) to be disseminated to all town staff who have direct contact with the public regarding housing, community development, social services or public safety. Erin Templin

Person responsible for action: Fair Housing Officer or Designated Staff Representative
Date will be accomplished by: April 2006 and annually in April thereafter
Records of accomplishment to be maintained by: Fair Housing Officer or Designated Staff Representative
Place where records will be kept:
First Copy: First Selectman's Office,
Responsible Party: BOS Secretary
Second Copy: Grant Office,
Civil Rights Files for Small Cities Oxford Senior Center Project
Responsible Party: Grant Administrator

Action Step #2: Item 7: Complaints

Fair Housing complaints may be made in writing or in person to the Fair Housing Officer (or his or her designated representative). The Fair Housing Officer is responsible for responding expeditiously to complaints registered by any person regardless of race, color, religion, sex, national origin, ancestry, sexual orientation, creed, marital status, lawful source of income, learning disability, mental or physical disability, including but not limited to blindness, age, or because the individual has children--who believes he or she has been discriminated against in any part of the attempt to obtain fair housing in Oxford. Fair Housing complaints will be recorded in the Fair Housing Complaint file located in the First Selectman's office. A second copy of the Fair Housing Complaint File will be kept by the Grant Administrator.

Person responsible for action: Fair Housing Officer or Designated Staff Representative

Date will be accomplished by: Ongoing; Summary Evaluation and Report to be conducted in April 2006 and annually in April thereafter
Records of accomplishment of this action step to be maintained by: Fair Housing Officer or Designated Staff Representative
Place where records will be kept:
First Copy: First Selectman's Office
Responsible Party: BOS Secretary
Second Copy: Grant Office,
Civil Rights Files for Small Cities Oxford Senior Center Project
Responsible Party: Grant Administrator

Action Step #3, Item 14 from Fair Housing Action Step List

Develop housing-related infrastructure through improvements in community services, particularly schools and revitalization of blighted areas, through economic development.

Oxford is seeking assistance to install sewer and water throughout the commercial and industrial districts in town. Oxford's commercial district (Route 67) is still primarily residential. While we are building a High School, we are also investigating the possibility of building a Magnet School centered on science and aviation to be located at Oxford Airport. This school would be available to students from Waterbury and Naugatuck. We are also working with the Grange to create a kind of makeshift community center for children taking karate classes. These classes are available locally and to students from Waterbury and Naugatuck.

Person responsible for action: Fair Housing Officer or Designated Staff Representative
Date will be accomplished by: Progress report to be accomplished in April 2006 and annually in April thereafter
Records of accomplishment to be maintained by: Fair Housing Officer or Designated Representative
Place where records will be kept:
First Copy: First Selectman's Office
Responsible Party: BOS Secretary
Second Copy: Grant Office,
Civil Rights Files for Small Cities Oxford Senior Center Project
Responsible Party: Grant Administrator

5. Action Step #4, Item 18 from Fair Housing Action Step List:

The Town of Oxford is actively seeking state and federal funding for infrastructure development, particularly water, sewer, and road improvement.

Person responsible for action: Grant Administrator
Date will be accomplished by: April 2006
Records of accomplishment to be maintained by: Grant Administrator
Place where records will be kept: Grant Department
Small Cities Oxford Senior Center Project
Responsible Party: Grant Administrator

6. Action Step #5: Item 21 from Fair Housing Action Step List:

The Town pledges to support local not-for-profits and housing partnerships in their efforts to develop additional affordable housing.

Person responsible for action: Grant Administrator
Date will be accomplished by: April 2006 and ongoing
Records to be maintained by: Grant Administrator
Place where records will be kept: Grant Department

7. Action Step #6: Item 32

Encourage local lenders to develop training and monitoring programs, including self-testing of lending practices

Person responsible for action: Grant Administrator
Date will be accomplished by: April 2006
Records to be maintained by: Grant Administrator
Place where records will be kept: Grant Department

The Board of Selectmen of the Town of Oxford affirms the above policy of promoting and assuring equal housing opportunity based on aforementioned civil rights legislation and action step pledges. This policy is intended to be consistent with, and to meet the requirements and objectives, of the Civil Rights Act of 1968, Title V or the National Housing Act (as amended), and all legislation related to nondiscrimination in housing. To implement this policy, the Town has adopted this plan, the principal objectives of which are (1) to take steps to encourage full compliance with all the requirements of the fair housing laws by all affected private and public persons, institutions, agencies, or bodies and (2) to promote and encourage affirmative marketing and similar efforts within the Town.

While principal persons, institutions, agencies that will help to make the greatest contribution to achieving the attainment of the above objectives are Realtors, lenders, and developers, the Town affirms its leadership role and responsibility for creating public awareness of and participation in the process of achieving these fair housing objectives.

The First Selectman and/or the individuals assigned responsibilities for implementation of this plan shall develop and recommend plans and actions for carrying out the objectives of this equal housing opportunity policy.

We agree that for housing to be open to all, positive action is necessary. Accordingly, specific educational and training goals have been established by the First Selectman and his representatives to ensure that a good faith effort is made by all Town departments in advancing the goal of fair housing. The Town pledges to draw upon the sources listed above, and supplemented by those below to ensure that people of all backgrounds and circumstances—whether framed by race, color, creed, national origin, ancestry, sexual orientation, marital status, lawful source of income, learning

disability, mental or physical disability, including but not limited to blindness, age, or because the individual has children--are aware of housing opportunities within the Town.

Implementation:

1. Dissemination

   a) Copies of this plan shall be distributed to all Town and local governmental departments, agencies, boards and commissions having any official responsibility relating to any aspect of housing opportunities within the Town.

   b) Copies of this plan shall be made available to all persons, institutions or agencies, public and private, having a direct involvement and interest in the provisions of housing (hereinafter referred to as "providers") including those referred to in paragraph B (2) above, with a request that such be retained and made available for examination of their respective premises.

   c) Each provider shall be requested to disseminate to their agents and employees having responsibility for housing-related functions, copies of the Plan in order that such agents and employees may be familiar with such policy.

2. Education Programs

   The staff designed by the First Selectman to assume individual responsibilities for the implementation of this Plan shall have the responsibility for establishing timetables for dissemination of copies of the Plan for working with available private resource personnel to develop and present such training programs or workshops as will best further the objectives of this plan.

Complaint Procedures:

Any person who feels that he or she has been discriminated against in an attempt to secure housing within the Town of Oxford may file a complaint with the First Selectman of the Town of Oxford at Town Hall. Complaints shall be filed no later than sixty (60) days after the act of discrimination occurred. To facilitate and standardize the complaint filing procedure, forms provided by the Department of Housing and Urban Development (HUD) may be used. Additional forms or background information will be developed as required. The First Selectman shall review the complaint and if the First Selectman cannot effect voluntary compliance with the law on the local level, the complainant shall be referred to Department of Housing and Urban Development and/or the Connecticut Commission on Human Rights and Opportunities. The First Selectman or his or her designated staff representative shall be responsible for keeping track of all complaints and providing

whatever follow-up assistance requested by the agencies involved.

Complaints shall be filed with CHRO or HUD no later than one hundred eighty (180) days after the alleged unfair act of discrimination occurred.

Technical Assistance:

The First Selectman shall be authorized to request technical assistance from the Department of Housing and Urban Development as described by Title VIII of the Civil Rights Act of 1968, as and to the extent deemed necessary, to aid in the effectuation and implementation of this Plan.

Evaluation/Reporting:

1. The First Selectman shall review the progress achieved under this Plan in April annually as part of Fair Housing Month. A report of the evaluations and recommendations shall be sent to the Board of Selectmen and the Department of Housing and Urban Development.

2. If otherwise during the term of this Plan, the First Selectman shall determine that any of the provisions of this Plan require modification or amendment, he shall forward his recommendations to the Board of Selectmen for approval or disapproval.

3. In carrying out such review and evaluation, the First Selectman and the Board of Selectmen shall use their best efforts to involve providers and other persons affected by the Plan of the purpose of obtaining their views as to the achievements or deficiencies or other suggestions for improved implementation of this Plan.

Dated: July 7, 2005

August A. Palmer, III
First Selectman Town of Oxford

SECTION 3 PLAN

TOWN OF OXFORD

Approved
by the Board of Selectman
in Oxford, Connecticut
on July 6, 2005

The purpose of Section 3 of the Housing and Urban Development Act of 1968 as amended (12. U.S.C. 1701u) (Section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons.

Applicability:

The Section 3 Plan applies to federal activities for housing and community development.

Purpose:

The purpose of this Plan is to provide to the greatest extent feasible economic opportunities for low and very low-income persons in the form of training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance) and community development assistance that is used for the following types of projects:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement)

(ii) Housing construction; and

(iii) Other public construction

Threshold for Training & Employment Opportunities:

These requirements apply to Housing and Community Development activities for which the amount of the assistance received from the Department of Economic and Community Development exceeds $200,000.

Numerical Goals:

30% of the funds will be covered under this program if the Town of Oxford hires someone internally to work on this project.

When the town puts the project out to bid in any project over 100,000 the contractor will be covered by the Section 3 Plan.

The Town of Oxford pledges to the greatest extent feasible when awarding contracts or conducting training opportunities for new hires resulting from activities or projects subject to the requirements of Section 3 to strive to comply with the goals established in this section. These goals apply to all Section 3-covered assistance awarded in any federal fiscal year. Numerical goals established in this section represent minimum targets.

Training and employment opportunities generated from the expenditure of section 3 activities to section 3 residents will follow the priorities indicated below:

(i) first priority will be given to Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located
(ii) second priority will be given to participants in HUD Youthbuild Programs
(iii) third priority will be given to homeless persons residing in the area or neighborhood in which the Section 3 covered project is located for housing constructed under the Steward B. Mckinney Homeless Assistance Act.
(iv) Fourth priority will be given to other Section 3 residents.

Required Documentation:

Persons requesting consideration for the above preferences will be required to submit certification to demonstrate eligibility.

Acceptable documentation to obtain certification includes, but is not limited to the following:

- proof of residency in a public housing development
- evidence of eligibility for section 8 voucher certificate or voucher
- evidence of eligibility for a federally assisted program for the poor (e.g. Jobs, JTPA, Job Corps)
- evidence of eligibility for a State or local assistance program for the poor or receipt of AFDC
- income tax records.

Contracting & Subcontracting Thresholds

The requirements of this section apply to contractors and subcontractors performing work on Section 3 covered project(s) for which the amount of the assistance exceeds $100,000.

The Town of Oxford commits to the following goal in awarding contracts in connection with a Section 3 project:

(1) At least 10 percent of the total dollar amount of section 3 covered projects shall go to section 3 covered building trades; this includes work arising in connection with housing rehabilitation, housing construction and other public construction

(2) Further, all procurement activity from this award will be conducted competitively consistent with 24 CFR 85.36(c)(2)

Eligibility for Preferences:

Business concerns requesting consideration for the above preferences will be required to submit certification that the business concern is a legitimate Section 3 business.

A Section 3 business concern is defined as business that (1) is 51 percent or more owned by Section 3 residents; or (2) whose permanent, full time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents or (3) that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) and (2) above.

Section 3 Clause (to be included in any project that goes out to bid)

All contracts subject to the Section 3 requirements will include the following clause:

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for Housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's

representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CPR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 13 5. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed were not filled to circumvent the contractor's obligations under 24 CPR Part 13 5.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Recording and Recordkeeping Requirements

The Town of Oxford will submit a quarterly report to the Department of Economic and Community Development in such form and with such information as the Affirmative Action Office may require for the purpose of determining the effectiveness of this Plan.

Complaint Procedure:

Any individual or business concern alleging that the Town of Oxford or any of its recipients of funds are in violation of the requirements of this Act may file a complaint with the First Selectman or the First Selectman's designated fair housing representative. Complaints filed with the First Selectman's office will follow the internal grievance procedure for fair housing complaints. Complaints may also be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. 20410.

Dated: July 7, 2005

August A. Palmer, III
First Selectman Town of Oxford

AFFIRMATIVE FAIR HOUSING PLAN
TOWN OF OXFORD

Approved
by Resolution of the Board of Selectman
of the Town of Oxford, Connecticut
on Wednesday July 6th, 2005

WHEREAS, the Congress of the United States in 1866 (the 1866 Civil Rights Act, 42 U.S.C. 1982) has declared that all citizens of the United States shall have the same rights to inherit, purchase, lease, sell, hold and convey real and personal property;

WHEREAS, the Congress of the United States has further declared by the Civil Rights Act of 1968, known as the Fair Housing Act (P.L. 90-284) (18 U.S.C. 245) (hereinafter called the "Act" that it is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the United States, thereby prohibiting discrimination by reason of race, color, religion, national origin, sex, national origin, ancestry, sexual orientation, creed, marital status, lawful source of income, learning disability, mental or physical disability, including but not limited to blindness, age, or because the individual has children in the sale or rental of housing; and

WHEREAS, Section 808 and 809 of the ACT provide that the authority and responsibility for administering the Act shall be vested in the Secretary of Housing and Urban Development (hereinafter called the "Secretary") and the Secretary is required to cooperate with and render technical assistance to private agencies, groups and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices and to undertake conciliatory activities which will further the purpose of fair housing and to work out programs of voluntary compliance with the cooperation and advice of the housing industry and other interested persons; and

WHEREAS, the Town of Oxford believes that the above-stated national policy of fair housing can effectively be promoted through programs of affirmative action in the private housing industry and markets; and

WHEREAS, the Town of Oxford believes it desirable to establish a local Fair Housing Plan for the purpose of effectuating the requirements of all applicable fair housing laws;

NOW, THEREFORE, in order to encourage public and private cooperation in achieving fair housing through affirmative action and other efforts, the Town of Oxford—a non-entitlement, **limited affordability rural community** with a population of approximately 10,000--establishes the following Affirmative Fair Housing Plan ("Plan"):

1. The Town of Oxford pledges to take positive steps to affirmatively and actively seek out opportunities to prohibit discrimination in housing and in our public construction projects on the basis of a person's race, creed, color, national origin, ancestry, sex, marital status, age,

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The U.S. Government's Official Web Portal

Employment/Economic Opportuniti Lower Income Persons and Busines (Section 3)

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Print version

Summary:
Section 3 of the HUD Act of 1968 requires, to the greatest extent feasible, that recipients of HUD funds (and their contractors and subcontractors) provide jobs and other economic opportunities to low-income persons, particularly public housi residents. Section 3 helps create employment for low-income persons a provides contracting opportunities for businesses that are owned by low people or that provide employment to low-income people.

Purpose:
The U.S. Department of Housing and Urban Development's (HUD) prog award billions of dollars each year for projects that generate thousands contracting opportunities. Section 3 of the HUD Act of 1968 requires thi recipients of HUD funds (and their contractors and subcontractors) prov and other economic opportunities to low-income persons. Through recr public housing neighborhoods, such fund recipients can make residents businesses aware of the opportunities available.

Type of Assistance:
Section 3 does not authorize funds; instead, it governs the use of funds appropriated for other HUD programs and provides job and contracting opportunities.

Eligible Grantees:
Section 3 automatically applies to grantees of HUD public housing and c development programs. States, local governments, public housing auth nonprofit organizations, and their contractors and subcontractors who r funds under the programs must follow Section 3.

Eligible Customers:
For training and employment, four categories of low-income persons (c Section 3 residents) receive priority: (1) residents of the public and ass housing, (2) those living near a HUD-assisted project, (3) participants i **Youthbuild programs**, and (4) homeless persons. For contracting, bu owned by Section 3 residents, businesses that employ Section 3 reside time, and subcontractors using such businesses receive priority.

Eligible Activities:
With respect to HUD's public housing programs, Section 3 applies to fu for specific types of development, operations, and modernization. For H housing and community development programs, Section 3 applies to: (rehabilitation (including lead-based paint hazard reduction), (2) housin construction, and (3) other public construction projects. Employment o available under Section 3 include accounting, purchasing, word process

TOWN OF OXFORD

MaryAnn Drayton-Rogers
First Selectman

S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
Phone: (203) 888-2543 ext. 3012 Fax: (203) 888-2136
E-mail: selectmen@oxford-ct.gov

Office of the First Selectman

FAIR HOUSING PLAN

TOWN OF OXFORD, CT

I. Policy Statement:

It shall be the policy and commitment of the Town of Oxford to ensure that fair and equal housing opportunities are granted to all persons, in all housing opportunities and development activities funded by the town, regardless of race, color, religion, gender, sexual orientation, marital status, lawful source of income, familial status, national origin, ancestry, age or mental or physical disability. This shall be done through a program of education, an analysis of impediments, and designation. This plan will incorporate the directives of state and federal laws and executive order, including, but not limited to:

a. Title VI of the Civil Rights Act of 1964
b. The Fair Housing Act – Title VIII of the Civil Rights Action of 1968, as amended.
c. Executive Order II063, as amended by Executive Order 12259
d. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended.
e. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended
f. Section 3 of the Housing and Community Development /Act of 1968, as amended
g. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended
h. The Americans with Disabilities Act of 1990
i. The Age Discrimination Act of 1975, as amended
j. Executive Order 11246 (as amended by Executive Orders 12375 and 12086)
k. Executive Order 12892, Leadership and Coordination of Fair Housing
l. Connecticut General Statues 46a-64c as amended.

The Town of Oxford commits to providing and promoting racial and economic integration in any housing development or financially supported with DECD funding and will take affirmative steps to reach beneficiaries from all racial and ethnic groups as well as the physically or mentally handicapped and families with children and to reach a broad

range of income eligible beneficiaries for appropriate and applicable housing opportunities.

II: Selection of Fair Housing Officer:

In accordance with the Title VIII, Civil Rights Act of 1968, as amended, the Fair Housing Officer below has been designated to handle fair housing complaints and activities

Kathleen O'Neil
Oxford Grant Administrator/Writer
Oxford Fair Housing Officer
486 Oxford Road
Oxford, CT 06478
(203) 888-2543 x 3067
grantadmin@oxford-ct.gov

The Fair Housing Officer is responsible for the intake and processing of all housing complaints as well as implementation of the Fair Housing Plan activities and actions. While not expected to be an "expert" in Fair Housing Laws, at a minimum, the officer will be familiar with the complaint process and federal and state laws, which address Fair Housing. Records which show the date, time, nature of the complaint and decisions made in the complaint process(es) will be fully documented. A separate file will maintain a record of all housing discrimination complaints and follow-up actions.

III. Complaint Process:

Housing discrimination complaint forms such as Forms HUG903 and HUG903A (Spanish version) from HUD and from 907 from the State of Connecticut Commission on Human Rights and Opportunities, as well as a summary of actions which constitute housing discrimination, and instructions for completing and filing housing discrimination complaints will be made available to citizens at Oxford Town Hall, 486 Oxford Road, Oxford, CT. Forms will also be distributed to lenders, realtors, and at other public places such as Library periodically.

The Fair Housing Officer will reasonably assist the complainant in submitting the complaint to the appropriate body by providing assistance in explaining the form and/or contacting the appropriate office and allowing the use of town phones for communication.

The individual(s) filing the complaint: will then be advised of the option of filing directly with the Department of Housing and Urban Development (HUD), the Connecticut Commission on Human Rights and Opportunities (CHRO), or the Equal Employment Opportunity Commission or with all agencies simultaneously. The Fair Housing Officer will keep a record of the progress on the number of complaints filed, actions taken, and the statue of each complaint.

IV>DECD Determination:

Following DECD guidelines, the town has calculated and determined its affordability status and community classification, based on data obtained and provided by DECD, the Town of Oxford had determined that it is classified as 2nd Tier Suburb.

V. Implementation and Action Steps:

The Town of Oxford will take specific steps and implementation activities over the next three-year period following the guidelines provided by DECD.

ACTION STEP 4: Gather information from organizations and agencies involved with fair housing such as DECD, CHRO, CHFA, DSS, DMHAS, HUD and private not-for-profits and distribute to all town staff which have direct contact with the public regarding housing, community development, social services or public safety matters.

ACTION STEP 15: Develop a formal procedure for inspecting and monitoring new construction and substantial rehabilitation for compliance with the fair housing laws, the Americans with Disabilities Act and related laws.

ACTION STEP 24: Waive impact and permit fees for affordable housing developments.

Additional Steps

The Town of Oxford will adopt annually the Fair Housing Policy Statement and Resolution as an indication of its commitment to Fair Housing Month during the month of April.

The Town of Oxford shall periodically prepare, solicit and provide public service announcements for local radio and/or TV stations in order to provide knowledgeable information about Fair Housing.

The Town of Oxford will display Fair Housing posters identifying the town's Fair Housing Officer, title, address and phone number in prominent locations. In addition, fair housing information will be distributed outside of traditional municipal locations including local realtors and banks.

All advertising of residential real estate owned by the Town of Oxford for sale, rent or financing will contain the Fair Housing logo, equal opportunity slogan as a means of educating home seeking public that the property is available to all persons regardless of race, color, religion, sex, mental or physical disability, sexual orientation, familial status, marital status, national origin, age, ancestry, or lawful source or slogan will depend on the type of media being used (visual or auditory). All logos/statements must appear at the end of the advertisement.

VI. Analysis of Impediments

The town will cooperate and assist the state with its periodic Analysis of Impediments and conduct a review of policies, practices and procedures that affect the location available and accessibility of housing.

VII. Timetable

The Town of Oxford will determine a reasonable timetable to carry out action steps within three years of the adoption of this plan.

VIII. Amendments:

The Town of Oxford's First Selectman shall amend and revise this Plan as required to keep current with state/federal affirmative action and equal opportunity policies and procedures and local actions and activities to further the purposes of this Plan.

MaryAnn Drayton-Rogers
Oxford First Selectman

Date May 7, 2008

AFFIRMATIVE FAIR HOUSING PLAN
TOWN OF OXFORD

Approved
by Resolution of the Board of Selectman
of the Town of Oxford, Connecticut
on Wednesday July 6th, 2005

WHEREAS, the Congress of the United States in 1866 (the 1866 Civil Rights Act, 42 U.S.C. 1982) has declared that all citizens of the United States shall have the same rights to inherit, purchase, lease, sell, hold and convey real and personal property;

WHEREAS, the Congress of the United States has further declared by the Civil Rights Act of 1968, known as the Fair Housing Act (P.L. 90-284) (18 U.S.C. 245) (hereinafter called the "Act" that it is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the United States, thereby prohibiting discrimination by reason of race, color, religion, national origin, sex, national origin, ancestry, sexual orientation, creed, marital status, lawful source of income, learning disability, mental or physical disability, including but not limited to blindness, age, or because the individual has children in the sale or rental of housing; and

WHEREAS, Section 808 and 809 of the ACT provide that the authority and responsibility for administering the Act shall be vested in the Secretary of Housing and Urban Development (hereinafter called the "Secretary") and the Secretary is required to cooperate with and render technical assistance to private agencies, groups and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices and to undertake conciliatory activities which will further the purpose of fair housing and to work out programs of voluntary compliance with the cooperation and advice of the housing industry and other interested persons; and

WHEREAS, the Town of Oxford believes that the above-stated national policy of fair housing can effectively be promoted through programs of affirmative action in the private housing industry and markets; and

WHEREAS, the Town of Oxford believes it desirable to establish a local Fair Housing Plan for the purpose of effectuating the requirements of all applicable fair housing laws;

NOW, THEREFORE, in order to encourage public and private cooperation in achieving fair housing through affirmative action and other efforts, the Town of Oxford—a non-entitlement, **limited affordability rural community** with a population of approximately 10,000--establishes the following Affirmative Fair Housing Plan ("Plan"):

1. The Town of Oxford pledges to take positive steps to affirmatively and actively seek out opportunities to prohibit discrimination in housing and in our public construction projects on the basis of a person's race, creed, color, national origin, ancestry, sex, marital status, age,

lawful source of income., familiar status, physical or mental disability or sexual orientation. Oxford will seek to promote racial and economic integration and affirmatively further fair housing in our housing programs.

2. The Town of Oxford will seek to attract prospective buyers and tenants of all majority and minority groups in Oxford. Groups not normally likely to apply for housing in Oxford include persons of minority, race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, familiar status, physical or mental disability or sexual orientation. Oxford will actively seek affirmative marketing strategies to inform members of these groups of the available housing and make them feel welcome to apply. We are committed to providing fair housing training on an annual basis for the Fair Housing Officer. These strategies are consistent with the requirements of the Department's Fair Housing Regulations and Affirmative Fair Housing Marketing and Selection Procedures Manual.

3. In addition, the Town of Oxford will adhere to CT GS 46a-64c as amended in its entirety which includes the statement that there will be no refusal to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling ton any person because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income or familial status, which group will be known as "protected class".

4. The Fair Housing Office will be located at:

S. B. Church Memorial Town Hall
Oxford, CT 06478

The Fair Housing Officer will be the First Selectman, Augustus Palmer, III:

S. B. Church Memorial Town Hall
Oxford, CT 06478
203-888-2543 x3034
203-888-2136 (fax)
selectmen@oxford-ct-gov

The designated staff representative will be Kathleen O'Neil, Grant Administrator and Writer:

S. B. Church Memorial Town Hall
Oxford, CT 06478
203-888-2543 x3067
203-888-2136 (fax) e-mail: grantadmin@oxford-ct.gov

Person responsible for action: Fair Housing Officer – August Palmer, III
Date accomplished by: April, 2006, and at a minimum, yearly thereafter
Records to be maintained by: Fair Housing Officer and His Designated Staff Representative.
Place where records will be kept:
Original Copy: Board of Selectman's Office; Responsible person BOS secretary
Second Copy: Grant Administration Office
Civil Rights File for Small Cities Oxford Senior Center Project
Responsible person: Grant Administrator – Kathleen O'Neil

5. **Oxford's discrimination procedure will provide for the expeditious resolution of complaints to ensure that legal options for filing complaints with enforcement agencies are not foreclosed. (At present there are no known complaints registered against or with the Town of Oxford.)**

6. **The Procedure for Complaints shall be:**

All complaints will be referred to the Fair Housing Officer.

A file of complaints will be kept in the First Selectman's office by the BOS secretary.

Complaints will be handled expeditiously and resolved locally where possible.

All locally unrecoverable complaints will be expeditiously forwarded for resolution to appropriate state authorities.

As part of Fair Housing Month, the Fair Housing Officer of his designated representative will prepare a progress report on the number, character and resolution of complaints filed by housing applicants within the immediate prior year. The report shall include information on the applicant, the nature of the complaints, actions taken, and the status of each complaint.

To affirmatively ensure that fair housing is available in the rural limited affordability community of Oxford, the Town pledges:

1. **To seek general compliance with all Fair Housing Laws, including,**

but not limited to, Title VIII of the Civil Rights Act of 1968, Title V of the National Housing Act (as amended), CTGS 46a-64c and the Connecticut Public Accommodations Act (Title 53 of Connecticut General Statutes).

2. **To identify and work with those persons, groups or agencies (realtors, lenders, bankers, community groups, government officials) that have the resources and ability to significantly impact the achievement of fair housing objectives set forth above.**

3. **To promote fair housing in the Town by dissemination of relevant information as to fair housing requirements to all persons having a direct involvement and interest in the provision of housing, including Realtors, leading institutions, developers, apartment and other rental unit owners and affected Town agencies. More specifically it is intended that workshops and other educational sessions be held for the following purposes, among others:**

   a) **to review equal opportunity lending programs with local lending institutions;**
   b) **to review with Realtors, developers and multi-unit dwelling owners or managers the requirements of federal and state Fair Housing Laws affecting them, and to offer guidance or assistance to such persons as to affirmative marketing and other techniques;**
   c) **to hold at least one annual general public information meeting to review housing requirements and impact;**
   d) **to assist affected Town agencies in the administration of Town programs or requirements which impact housing opportunities of Town programs or requirements which impact housing opportunities; and**
   e) **to encourage generally greater understanding and familiarity with both the objective of equal housing opportunity and the various techniques by which such objective may be furthered.**

Further, by Resolution of the Board of Selectman, the Town of Oxford pledges at a minimum to pursue the following action steps to actively affirm fair housing in this community:

1. **Action Step #1: Item 3 from the Fair Housing Action Step List: Training**

The Fair Housing Officer of Oxford or his designated staff representative will accomplish action step #3 of the 2005 Grant Management Guidelines for Recipients of CDBG Funds' Fair Housing Action Housing Action Plan Instructions:

The Fair Housing Officer of the town of Oxford or his designated staff representative will gather information from organizations and agencies involved with fair housing practices and rules (such as DECD, CHRO, HUD and private not-for profit fair housing agencies) to be disseminated to all town staff who have dir4ect contact with the public regarding housing, community development, social services or public safety.

Person responsible for action: Fair Housing Officer or Designated Staff Representative
Date will be accomplished by: April 2006 and annually in April thereafter
Records of accomplishment to be maintained by: Fair Housing Officer or Designated Staff Representative
Place where records will be kept:
First Copy: First Selectman's Office,
Responsible Party: BOS Secretary
Second Copy: Grant Office,
Civil Rights Files for Small Cities Oxford Senior Center Project
Responsible Party: Grant Administrator

Action Step #2: Item 7: Complaints

Fair Housing complaints may be made in writing or in person to the Fair Housing Officer (or his or her designated representative). The Fair Housing Officer is responsible for responding expeditiously to complaints registered by any person regardless of race, color, religion, sex, national origin, ancestry, sexual orientation, creed, marital status, lawful source of income, learning disability, mental or physical disability, including but not limited to blindness, age, or because the individual has children--who believes he or she has been discriminated against in any part of the attempt to obtain fair housing in Oxford. Fair Housing complaints will be recorded in the Fair Housing Complaint file located in the First Selectman's office. A second copy of the Fair Housing Complaint File will be kept by the Grant Administrator.

Person responsible for action: Fair Housing Officer or Designated Staff Representative

Date will be accomplished by: Ongoing; Summary Evaluation and Report to be conducted in April 2006 and annually in April thereafter
Records of accomplishment of this action step to be maintained by: Fair Housing Officer or Designated Staff Representative
Place where records will be kept:
First Copy: First Selectman's Office
Responsible Party: BOS Secretary
Second Copy: Grant Office,
Civil Rights Files for Small Cities Oxford Senior Center Project
Responsible Party: Grant Administrator

Action Step #3, Item 14 from Fair Housing Action Step List

Develop housing-related infrastructure through improvements in community services, particularly schools and revitalization of blighted areas, through economic development.

Oxford is seeking assistance to install sewer and water throughout the commercial and industrial districts in town. Oxford's commercial district (Route 67) is still primarily residential. While we are building a High School, we are also investigating the possibility of building a Magnet School centered on science and aviation to be located at Oxford Airport. This school would be available to students from Waterbury and Naugatuck. We are also working with the Grange to create a kind of makeshift community center for children taking karate classes. These classes are available locally and to students from Waterbury and Naugatuck.

Person responsible for action: Fair Housing Officer or Designated Staff Representative
Date will be accomplished by: Progress report to be accomplished in April 2006 and annually in April thereafter
Records of accomplishment to be maintained by: Fair Housing Officer or Designated Representative
Place where records will be kept:
First Copy: First Selectman's Office
Responsible Party: BOS Secretary
Second Copy: Grant Office,
Civil Rights Files for Small Cities Oxford Senior Center Project
Responsible Party: Grant Administrator

5. Action Step #4, Item 18 from Fair Housing Action Step List:

The Town of Oxford is actively seeking state and federal funding for infrastructure development, particularly water, sewer, and road improvement.

Person responsible for action: Grant Administrator
Date will be accomplished by: April 2006
Records of accomplishment to be maintained by: Grant Administrator
Place where records will be kept: Grant Department
Small Cities Oxford Senior Center Project
Responsible Party: Grant Administrator

6. Action Step #5: Item 21 from Fair Housing Action Step List:

The Town pledges to support local not-for-profits and housing partnerships in their efforts to develop additional affordable housing.

Person responsible for action: Grant Administrator
Date will be accomplished by: April 2006 and ongoing
Records to be maintained by: Grant Administrator
Place where records will be kept: Grant Department

7. Action Step #6: Item 32

Encourage local lenders to develop training and monitoring programs, including self-testing of lending practices

Person responsible for action: Grant Administrator
Date will be accomplished by: April 2006
Records to be maintained by: Grant Administrator
Place where records will be kept: Grant Department

The Board of Selectmen of the Town of Oxford affirms the above policy of promoting and assuring equal housing opportunity based on aforementioned civil rights legislation and action step pledges. This policy is intended to be consistent with, and to meet the requirements and objectives, of the Civil Rights Act of 1968, Title V or the National Housing Act (as amended), and all legislation related to nondiscrimination in housing. To implement this policy, the Town has adopted this plan, the principal objectives of which are (1) to take steps to encourage full compliance with all the requirements of the fair housing laws by all affected private and public persons, institutions, agencies, or bodies and (2) to promote and encourage affirmative marketing and similar efforts within the Town.

While principal persons, institutions, agencies that will help to make the greatest contribution to achieving the attainment of the above objectives are Realtors, lenders, and developers, the Town affirms its leadership role and responsibility for creating public awareness of and participation in the process of achieving these fair housing objectives.

The First Selectman and/or the individuals assigned responsibilities for implementation of this plan shall develop and recommend plans and actions for carrying out the objectives of this equal housing opportunity policy.

We agree that for housing to be open to all, positive action is necessary. Accordingly, specific educational and training goals have been established by the First Selectman and his representatives to ensure that a good faith effort is made by all Town departments in advancing the goal of fair housing. The Town pledges to draw upon the sources listed above, and supplemented by those below to ensure that people of all backgrounds and circumstances—whether framed by race, color, creed, national origin, ancestry, sexual orientation, marital status, lawful source of income, learning

disability, mental or physical disability, including but not limited to blindness, age, or because the individual has children--are aware of housing opportunities within the Town.

Implementation:

1. Dissemination

   a) Copies of this plan shall be distributed to all Town and local governmental departments, agencies, boards and commissions having any official responsibility relating to any aspect of housing opportunities within the Town.

   b) Copies of this plan shall be made available to all persons, institutions or agencies, public and private, having a direct involvement and interest in the provisions of housing (hereinafter referred to as "providers") including those referred to in paragraph B (2) above, with a request that such be retained and made available for examination of their respective premises.

   c) Each provider shall be requested to disseminate to their agents and employees having responsibility for housing-related functions, copies of the Plan in order that such agents and employees may be familiar with such policy.

2. Education Programs

   The staff designed by the First Selectman to assume individual responsibilities for the implementation of this Plan shall have the responsibility for establishing timetables for dissemination of copies of the Plan for working with available private resource personnel to develop and present such training programs or workshops as will best further the objectives of this plan.

Complaint Procedures:

Any person who feels that he or she has been discriminated against in an attempt to secure housing within the Town of Oxford may file a complaint with the First Selectman of the Town of Oxford at Town Hall. Complaints shall be filed no later than sixty (60) days after the act of discrimination occurred. To facilitate and standardize the complaint filing procedure, forms provided by the Department of Housing and Urban Development (HUD) may be used. Additional forms or background information will be developed as required. The First Selectman shall review the complaint and if the First Selectman cannot effect voluntary compliance with the law on the local level, the complainant shall be referred to Department of Housing and Urban Development and/or the Connecticut Commission on Human Rights and Opportunities. The First Selectman or his or her designated staff representative shall be responsible for keeping track of all complaints and providing

whatever follow-up assistance requested by the agencies involved.

Complaints shall be filed with CHRO or HUD no later than one hundred eighty (180) days after the alleged unfair act of discrimination occurred.

Technical Assistance:

The First Selectman shall be authorized to request technical assistance from the Department of Housing and Urban Development as described by Title VIII of the Civil Rights Act of 1968, as and to the extent deemed necessary, to aid in the effectuation and implementation of this Plan.

Evaluation/Reporting:

1. The First Selectman shall review the progress achieved under this Plan in April annually as part of Fair Housing Month. A report of the evaluations and recommendations shall be sent to the Board of Selectmen and the Department of Housing and Urban Development.

2. If otherwise during the term of this Plan, the First Selectman shall determine that any of the provisions of this Plan require modification or amendment, he shall forward his recommendations to the Board of Selectmen for approval or disapproval.

3. In carrying out such review and evaluation, the First Selectman and the Board of Selectmen shall use their best efforts to involve providers and other persons affected by the Plan of the purpose of obtaining their views as to the achievements or deficiencies or other suggestions for improved implementation of this Plan.