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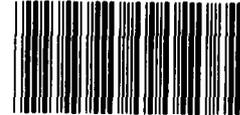
UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT  
DIVISION

B-201264

DECEMBER 5, 1980

The Honorable James T. McIntyre, Jr.  
Director, Office of Management and Budget



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The Honorable Benjamin R. Civiletti  
The Attorney General

Subject: [Government-wide Coordination Activities  
for Implementing Section 504 of the  
Rehabilitation Act of 1973] (HRD-81-35)

In April 1980, we completed a review of the Department of Health, Education, and Welfare's (HEW's) Government-wide coordination activities for implementing section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, et seq.). Effective May 4, 1980, separate Departments of Education and Health and Human Services were created to replace HEW. The activities discussed in this report became the responsibility of the Department of Health and Human Services. On November 2, 1980, Executive Order 12250 transferred the responsibility for coordinating Federal agencies' implementation of section 504 to the Department of Justice.

This report summarizes the results of our review and contains recommendations to the Attorney General and the Director, Office of Management and Budget, regarding the coordination and implementation of section 504 requirements.

Our work was conducted at HEW's headquarters and at the headquarters of 22 Federal agencies and offices which had not issued regulations implementing section 504. We also compared final section 504 regulations issued by six agencies and departments to guidelines promulgated by HEW.

The findings presented in this report were discussed with a Department of Health and Human Services official, and his comments are included where appropriate. Comments by officials of the Department of Justice and Office of Management and Budget appear on page 8.

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HEW HAS NOT EFFECTIVELY  
PERFORMED ITS COORDINATION ROLE

In section 504, the Congress recognized handicapped individuals' rights to participate in and benefit from federally funded programs and activities. Section 504 provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance. In April 1976, Executive Order 11914 directed HEW to coordinate implementation of section 504 throughout the Federal Government. The Executive order also directed HEW to establish standards for determining who are handicapped persons under the provisions of section 504 and to develop guidelines for determining discriminatory practices prohibited by section 504. Federal departments and agencies with financial assistance programs subject to section 504 were further directed to issue rules, regulations, and directives consistent with the standards issued by HEW.

HEW did not issue its guidelines until January 1978, almost 2 years after the Executive order. The guidelines contained weaknesses, HEW was not able to resolve inconsistencies between its guidelines and other Federal agencies' regulations, and HEW's technical assistance efforts were inadequate.

HEW attributed delays to absence  
of congressional guidance

HEW's regulations implementing Executive Order 11914, issued on January 13, 1978, as 45 C.F.R. 85, established (1) Federal agency responsibilities, (2) standards for defining a handicapped person, and (3) guidelines for determining discriminatory practices. The January 1978 regulations were based on HEW's regulations (45 C.F.R. 84) for implementing section 504 in its own financial assistance programs.

In announcing HEW's own section 504 regulations in May 1977, the Secretary stated that:

"\* \* \* Drafting a regulation has been a most difficult task because section 504 prohibits discrimination against the handicapped in broad and unequivocal terms, and yet the Congress enacted the Section without legislative hearings and virtually no floor debate in either House. There is, thus, little Congressional guidance on the host of complex issues raised by section 504's far-reaching prohibition against discrimination.

"This lack of Congressional guidance doubtless contributed to my predecessor's decision not to sign a 504 regulation before he left office, despite the fact that the law had been in effect for 2 1/2 years, but merely to send a draft regulation back to Capitol Hill in mid-January.

"Shortly after assuming office, it was obvious to me that I could not sign a 504 Regulation without carefully reviewing the issues and determining that the regulations I would promulgate met the legitimate needs of handicapped individuals, conformed to the far-reaching intent of Congress, as best we could discern it, and dealt forcefully, yet fairly with recipients of Federal funds. \* \* \*"

#### Guidelines contain weaknesses

HEW's January 1978 guidelines did not attempt to provide direction for some of the situations that Federal agencies may encounter. Instead, HEW advised the agencies to include specific provisions in their own regulations for the particular programs and activities they administer. However, HEW, in our opinion, should have given agencies specific direction regarding the difference between program accessibility and architectural accessibility.

Recipients of Federal financial assistance are required to operate each program or activity so that it is readily accessible to and usable by handicapped persons. But, the guidelines describe program accessibility in terms of architectural accessibility; i.e., making programs accessible by removing physical barriers to mobility-impaired individuals.

As such, the guidelines do not adequately explain that program accessibility can also be achieved without making structural changes. For example, a program can be made accessible by printing documents in large type for the visually impaired and providing interpreters for the deaf.

A Department of Health and Human Services official stated that much of the confusion among recipients was caused by the misplacement of program accessibility guidelines under the section for architectural accessibility. Although this error may have resulted in some misunderstanding, we do not believe it was the primary problem because the segment of the guidelines dealing with program accessibility does not provide clear direction on making programs accessible without structural changes.

Another problem was that HEW's guidelines did not give agencies guidance on developing standards for architectural accessibility. HEW's May 1977 regulations specify that the architectural accessibility standards of the American National Standards Institute (ANSI), or their equivalent, are the criteria to be used by recipients of its financial assistance. But HEW did not include reference to the ANSI standards or any published standards in its January 1978 guidelines for other agencies. Instead, HEW specified only that the facilities of other agencies' financial assistance recipients be readily accessible to and usable by handicapped persons. Consequently, 45 C.F.R. 85 provides no guidance on the appropriate standards to use in determining architectural accessibility.

The Health and Human Services official said that ANSI standards were not included because they lacked provisions for many facilities--such as residences, pools, parks, and gymnasiums--that are covered by financial assistance programs. While this may be true, we believe that some form of guidance on architectural accessibility standards is necessary even though the referenced standards are not all inclusive.

Federal agencies' regulations  
not consistent with HEW guidelines

We found several inconsistencies between HEW's 1978 guidelines and the section 504 regulations issued by other Federal agencies. For example, one agency's definition of financial assistance did not include the provision of services and/or

property as a form of Federal financial assistance, and its regulations did not provide the required time frame for recipients to prepare a transition plan for eliminating physical barriers in existing structures.

Similarly, we found inconsistencies between HEW's guidelines and section 504 regulations being drafted by other Federal agencies. Many of the inconsistencies were minor, such as omitting a specific requirement that recipients consult with interested persons, including handicapped persons, on what constitutes compliance. However, several inconsistencies, such as different definitions of a handicapped person or the exclusion of prohibitions against specific employment practices, have major consequences, especially for governments or organizations receiving funds from several Federal agencies. Because of these inconsistencies, compliance with one agency's regulations may not be adequate to satisfy compliance with another agency's regulations.

#### More technical assistance needed

While HEW provided technical assistance to other Federal agencies, it often failed to advise them about available policy statements and in one instance delayed the clarification of a court decision affecting section 504 enforcement. For example, in June 1979 the U.S. Supreme Court ruled that educational institutions do not have to lower or substantially modify academic standards to accommodate handicapped persons. This decision appeared to contradict HEW's guidance on academic requirements (45 C.F.R. 85). But it was October 1979 before HEW issued a statement on the consistency of the court ruling with the 1978 regulations. Several agencies' officials who were writing section 504 regulations said the uncertainty raised by the court's decision delayed their efforts to issue final regulations.

In addition, HEW did not coordinate agencies' development of regulations and procedures with other agencies that had similar issues subject to section 504 regulations. For example, three agencies were independently developing section 504 regulations and procedures for the preservation of historic buildings. Although HEW was aware of some of these efforts, it failed to coordinate them so that a single set of regulations could be established to govern all historic buildings or to ensure that the three agencies' regulations were consistent.

SEVERAL FEDERAL AGENCIES HAVE BEEN SLOW  
TO IMPLEMENT SECTION 504 REQUIREMENTS

In its leadership role, HEW requested 28 Federal agencies and offices to issue regulations for implementing section 504, but as of April 1980, only 6 had done so. <sup>1/</sup> This was 6 years after passage of the Rehabilitation Act of 1973, 3 years after Executive Order 11914 directed HEW to coordinate implementation of the act and Federal agencies to issue implementing regulations, and 2 years after HEW established guidelines for agencies to use in writing their section 504 regulations.

We asked officials of the 22 Federal agencies that had not issued regulations to explain the delay. The most frequent explanations they gave were:

- Staff not available to process regulations.
- Too much other civil rights work.
- Difficulty in developing regulations to fit peculiarities of agency programs.
- Need for more assistance from HEW.

Based on agencies officials' estimates, it will probably be late 1980 before all 22 agencies issue their regulations. Eight agencies have chosen not to enforce the requirements of section 504 until their final regulations are issued. One of the more frequent reasons given for this position was that enforcement would be unfair to recipients because they do not have Federal guidelines or compliance criteria to follow in conducting their programs.

Officials in the other 14 agencies without final regulations said they enforce section 504 requirements in their assistance programs. Their primary enforcement tool was complaint investigation. None of the agencies conducted section 504 compliance reviews, and only five included section 504 in compliance reviews for other civil rights requirements, such as title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Officials of these agencies said that the

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<sup>1/</sup>After our fieldwork, 10 more agencies had issued section 504 regulations as of November 1980.

criteria used for judging compliance included HEW's January 1978 guidelines, the agencies' draft regulations, their literal interpretation of section 504, and their investigators' experience. Six agencies required recipients to submit written assurances of compliance with grant applications, but officials of only one agency said it made grant awards conditional on their submission. Officials of several agencies said written assurances were filed, while others did not know what happened to them.

### CONCLUSIONS

Most Federal agencies subject to Executive Order 11914 had done little to ensure that federally assisted programs and activities comply with section 504. While agency officials gave a number of reasons for the delays, we believe a major cause was the low priority agencies gave to enforcing the requirements of section 504.

Contributing also to the limited compliance with section 504 were (1) weaknesses in HEW's 1978 regulations for guidance of other agencies, (2) inconsistencies between HEW's and other agencies' regulations, and (3) inadequate technical assistance by HEW. Because these problems will likely contribute to further delays in issuing regulations, the coordinating agency must take a more active role in correcting them if the objectives of section 504 are to be attained.

### RECOMMENDATION TO THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

✓ We recommend that the Director instruct the heads of Federal departments and agencies that have not yet issued section 504 regulations to do so as soon as possible.

### RECOMMENDATIONS TO THE ATTORNEY GENERAL

We recommend that, in preparing for the section 504 coordination responsibility, the Attorney General establish priorities for:

- Revising the 1978 regulations to give other Federal agencies more clearly defined guidance on issues they view as not adequately covered in the 1978 regulations.

- Resolving inconsistencies between these regulations and those issued by other Federal agencies.
- ✓--Increasing the technical assistance provided to other agencies.

AGENCY COMMENTS AND OUR EVALUATION

Department of Justice and Office of Management and Budget officials concurred with the recommendations in this report. The Justice representative stated that each of the recommendations is addressed in the management plan now being developed for the Department's implementation of the Government-wide coordination role. One major concern expressed by representatives of both agencies is that Justice will probably not be able to fully perform the section 504 functions with its existing resources. Although we did not assess the resource needs of Justice, we believe this area of concern should be given careful consideration.

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As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

Copies of this report are being sent to the Chairmen of the four above-mentioned Committees; the Chairman, Subcommittee on Employment Opportunities, House Committee on Education and Labor; and the Secretary, Department of Health and Human Services.

*W. J. Anderson*

William J. Anderson  
Director