A Commission Report

Disability Rights Mandates:

Federal and State Compliance with Employment Protections and Architectural Barrier Removal

Advisory Commission on Intergovernmental Relations

A-111
April 1989

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Preface

One of the deeply embedded values in American culture is the sense of fair play. Although fairness is an elementary principle for any good society, fair play is particularly important in a federal system where numerous governments having independent and concurrent jurisdictions perform a multiplicity of functions for citizens.

In the American federal system, intergovernmental fair play serves three important purposes. First, it promotes mutual respect and cooperation among the actors in different jurisdictions. Second, it reduces and helps to resolve conflict. Indeed, when there is conflict in the intergovernmental system, confidence in the rule of fair play can facilitate compromise. Third, fair play helps to maintain balance in the federal system by encouraging adherence to the constitutional rules of the intergovernmental game. What was once called "comity" in the federal system reflected the general idea that the federal and state governments should cooperate and coordinate efforts in meeting public needs while respecting the constitutional integrity of each other's distinctive jurisdictions.

Intergovernmental confidence in the rule of fair play, however, has been shaken by a number of developments in the federal system. One of those developments has been the rise of regulatory federalism, which the ACIR outlined in its 1984 report *Regulatory Federalism: Policy, Process, Impact and Reform.* This brand of federalism involves new and often extensive intrusions of federal power and authority into state and local government affairs.

An especially salient and contentious feature of regulatory federalism is the willingness of the federal government to impose requirements, or mandates, on state and local governments without appropriating funds, or by appropriating only token funding, to help state and local governments implement those mandates. When carried out on a large scale, such unfunded mandating violates the rule of intergovernmental fair play for most state and local officials. Ordinarily, one expects that he who calls the tune over and over again will pay the piper.

Furthermore, given that most of these national mandates apply only to state and local governments (because they are the nation's primary service providers) rather than to the federal government, state and local governments often become the targets of criticism for problems and obstacles that arise in the implementation of national mandates. The national government usually receives credit from policy advocates for enacting a mandate, while state and local governments frequently receive the brunt of criticism for not complying speedily or fully enough with the mandate. Indeed, perceptions of intergovernmental delay often lead to calls for increased national intervention.

There are, however, areas in which national mandates apply to both the federal government and state and local governments. What, then, is the record of federal compliance in these areas, and how does the compliance performance of the federal government compare to the compliance performance of state and local governments? Or, to put the matter in a way that directly evokes the sense of fair play, does the federal government practice what it preaches?

Members of the Commission raised this question for investigation, in part, because of experiences in their own jurisdictions with problems of federal government compliance with its own rules. The national media have also raised this question, especially since discovering that the federal government has been lax in policing safety at its own nuclear facilities. Indeed, in what may be an historic turnabout, Ohio officials and federal officials recently agreed to have the state take jurisdiction over the cleanup and policing of certain hazardous wastes created by a uranium processing plant. The federal government will pay fines of about $1 million and cover Ohio's costs for cleaning up the waste. Similarly, commenting on the pace of federal implementation of federal drug testing legislation—which is applicable to many private and public sector employers as well as to the federal government—the *National Journal* (November 26, 1988) noted: "Do as we say, not as we do. That seems to be the message from Washington when it comes to drug testing."

The first area selected for exploratory study by the ACIR was that of federal and state compliance with national disability rights mandates, specifically, architectural barrier removal and equal employment opportunity. Overall, the study finds that compliance among federal agencies is about as variable as compliance among states and state agencies. The reasons for uneven compliance among federal agencies, moreover, are often the same as those for uneven compliance among the 50 states. One of those reasons is too little funding to support implementation. Furthermore, despite the applicability of the disability mandates to federal and state agencies, there appears to be little intergovernmental coordination of compliance efforts.

The answer to the basic question, then, of whether the federal government practices what it preaches is this: Some federal agencies are exemplary practitioners of what the federal government preaches, while other federal agencies are poor practitioners. Thus, the enactment of a federal mandate produces a uniform national policy, which is a major goal of proponents of nationalization of the federal system, but it may result in patterns of intragovernmental compliance that are not substantially different from patterns of intergovernmental compliance.

What are the potential implications of this finding for regulatory federalism generally and for the implementation of disability rights mandates specifically?

For one, it is a common expectation that the behavior of a preacher should be a model for his or her congregation. Exemplary behavior by the preacher sets a tone that encourages changes in the behavior of the congregation. Similarly, exemplary behavior by the federal government sends a very positive message, while lax or uneven mandate compliance by the federal government sends a negative message about the value and priority being placed on a mandate by federal officials. Thus, one way to promote intergovernmental change and cooperation with respect to national standards is for the federal government to be exemplary in word and deed. This is especially important in the field of disability rights, which are fundamental for so many citizens.

Exemplary behavior in this field is also important because, given the limited scope of its service delivery activities, the federal government is often in the unique position of not having to practice what it preaches. Consequently, if it does not vigorously practice what it preaches in those fields in which it is called on to do so, then perceptions of unfairness spill over into the many fields in which states and localities are called on to practice what the federal government preaches by implementing federal mandates.

This is not to suggest that state and local governments should use federal laxity as an excuse for similarly lax behavior. States and local communities have their own direct responsibilities to disabled citizens, and in this field especially, states have an opportunity to demonstrate initiative and innovation. Indeed, improved performance in the disability rights field would enhance public esteem and, thereby, contribute to a further strengthening of the position of the states in the federal system. Nevertheless, federal officials need to be attentive to the potentially debilitating effects on implementation of even the appearance of a double standard in the federal system.

The findings of this study indicate that the existence of national mandates does not necessarily eliminate the need for citizen groups to be attentive to state capitols and city halls. Ironically, one factor in the rise of regulatory federalism has been the desire of interest groups to concentrate their resources on one government, namely, the national government, rather than 50 different state governments. Yet, success in the national arena is often only partial, and sometimes only largely symbolic. It is the implementation of national rules that takes one back to states and localities.

The findings of this study also suggest that problems of policy implementation that are often attributed to intergovernmental obstacles may be as much or more due to intragovernmental obstacles. The rise of regulatory federalism has been fueled by a belief

that it is better to have one government rather than 50 governments perform functions. One government can presumably formulate rational and coherent policy, and then coordinate the efficient implementation of that policy, thus avoiding the fragmentation and diversity often said to be characteristic of intergovernmental policy implementation. Yet, the problem with this theory is that intergovernmental fragmentation, which may not be the real issue in every case, may simply be replaced by intragovernmental fragmentation. As more responsibilities are assigned to one government, intragovernmental fragmentation is likely to be exacerbated. What needs to be explored, then, is how intergovernmental policymaking may be, under many circumstances, a more effective way to achieve essential national objectives than purely national policymaking in which compliance requirements are more prominent than alliance incentives.

Another issue to be addressed is whether the federal government is as equally willing and able to impose sanctions on its own agencies for noncompliance as it is to impose sanctions on state and local governments. Federal agencies and courts may levy fines, withhold grant funds, or compel state and local governments to alter funding priorities or raise new revenue in order to enforce compliance with national mandates. Would the Congress or the President be prepared, let us say, to withhold 10 percent of the Defense Department's funding in order to compel compliance if the department were not in full compliance with certain mandates applicable to federal agencies? Is the U.S. Supreme Court prepared to compel the Congress and the President to raise taxes to ensure federal compliance with mandates? Does the Congress itself ensure that its own rules and procedures conform to legislated mandates?

Finally, the findings of this study suggest that there is a continuing need to build consensus in the intergovernmental system in order to implement policy nationwide. It is not enough to enact mandates more or less unilaterally and to expect compliance to flow swiftly in their wake. Another factor in the rise of regulatory federalism has been the desire of pressure groups to circumvent or override the many veto points said to exist in the federal system. The price of this strategy, however, can be high, including policy ambiguity and the lack of a sufficiently strong consensus to follow through on vigorous implementation. Policy mandates need to be owned, or at least not disowned, by those who must implement them. Thus, bringing federalism back into the national policy-making process can improve the implementation of policy in what must necessarily be an intergovernmental process.

The findings and recommendations were approved by the Commission at its meeting on March 10, 1989.

Robert B. Hawkins, Jr.
Chairman

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Findings

STATE AND FEDERAL COMPLIANCE WITH DISABILITY RIGHTS MANDATES

1. Federal Compliance with Disability Rights Mandates Is Similar to State Compliance

The central question of this study—does the federal government practice what it preaches about job opportunities and removal of architectural barriers for persons with disabilities—cannot be answered fully because sufficient empirical information is not available. What is clear, however, is that federal compliance is not greatly different from state compliance. There appears to be as much variation across federal agencies as there is across states and state agencies. Although complaints about tardy or insufficient state compliance with federal mandates often make the states objects of public criticism for being less progressive than the federal government, the disability rights field, unlike many other fields involving federal mandates, allows the public to observe federal compliance with mandates that apply to itself as well as to the states. While the federal government has made progress in practicing what it preaches, it has no less difficulty than the states in living up to its own pronouncements.

2. The Relative Effectiveness of State and Federal Compliance with Disability Rights Mandates Is Not Being Measured Precisely

Employment of persons with disabilities in the federal executive branch is recorded and reported regularly by the Equal Employment Opportunity Commission and the Office of Personnel Management. Those reports show a wide range of compliance effectiveness from one agency to another. Although substantial progress has been made in complying with this mandate, persons with serious disabilities remain underrepresented in the federal work force. This study, however, was unable to find similar data for the states or for Congress. Most states do not regularly collect or report information on state employment of persons with disabilities. Such fragmentary data as are available for the states, however, suggest that there is a rough equivalence in the rate of compliance between the states and the federal government.

With respect to the removal of architectural barriers that limit the access of persons with disabilities to government programs and services, neither federal agencies nor their state counterparts have systems to inventory barriers that need removal or to track progress in removing them. Within the federal government, it has taken 20 years for the four principal enforcement agencies to agree on the necessary implementing regulations. That agreement came finally in 1988. Although substantial progress has been made, the extent of that progress cannot be meas-

ured accurately or compared precisely among federal and state agencies.

Congress, itself, has been exempt from both the employment and architectural barriers requirements that it placed on federal agencies and on state and local governments. Some observers see this exemption as a double standard that promotes cynicism about the mandates in many of the agencies charged with compliance responsibilities. As far as this study could determine, Congress does not collect and report information on its own employment of persons with disabilities. It has made substantial progress in recent years, however, in removing architectural barriers.

Furthermore, some federal agencies plead special circumstances that should entitle them to exemptions or less stringent compliance requirements. Examples include reporting exemptions for national security intelligence agencies, U.S. Department of State beliefs that compliance with disability rights mandates at its foreign facilities can run afoul of local customs or compromise security, and recognition in the legislation that the Defense Department's military installations are for the able bodied and, as such, are not fully required to accommodate persons with disabilities.

A Commission survey of state officials responsible for complying with disability rights mandates, and of state disability rights advocacy groups revealed that majorities of both groups believe that the federal government does practice what it preaches with regard to compliance with its own disability rights mandates (51 percent and 61 percent, respectively). A substantial minority of both groups (31 percent of state officials and 25 percent of advocates) rated the federal government as "only a little" or "not at all" practicing what it preaches.

When asked to rate the relative effectiveness of state and federal compliance efforts on a scale of 1 (very effective) to 5 (not very effective), both groups placed the federal government marginally ahead in efforts to employ persons with disabilities (3.28 to 3.56 in the judgment of state government officials and 3.43 to 3.94 in the judgment of state-level advocacy groups), and slightly ahead in efforts to provide "reasonable accommodations" for employees with disabilities (3.07 to 3.14 by state officials and 3.27 to 3.50 by advocates). However, the scores were mixed concerning the removal of architectural barriers. State officials judged the states to be ahead by 2.60 to 2.69, while advocacy groups rated the federal government ahead by 2.74 to 2.79. In all these cases, the scores are very close together, indicating that differences may be insignificant.

3. Persons with Disabilities Comprise a Significant Segment of the Population

Surveys indicate that persons with health problems that prevent them from participating fully in work, school, or other activities may equal as much as 15 percent of all Americans aged 16 and older, or approximately 27 million Americans. The physical conditions experienced by these people include impediments to hearing, sight, speech, personal mobility, manual dexterity, and mental dexterity. With the aging of the American population, there is likely to be an increase in the proportion of the population experiencing such conditions.

4. Mandates Concerning Jobs and Accessibility for Persons with Disabilities Are State as Well as Federal

The 50 states and the District of Columbia have laws that provide employment protections for persons with disabilities and require architectural accessibility for them. The related federal mandates are stronger than many of their state counterparts in requiring program accessibility and reasonable accommodation in employment. In general, federal law also provides employment rights to a wider set of persons with disabilities than do state laws, although 16 states have added coverage for mental disabilities in the past decade to help close this gap. State requirements for both architectural accessibility and nondiscrimination in employment generally apply more broadly than federal requirements in that they are placed on the private as well as public sectors.

5. The State and Federal Governments Face Similar Difficulties in Administering and Complying with Disability Rights Mandates

Legislation mandating disability rights usually is quite general. The operational details are left to the regulation-writing process. In this process, regulators often face very difficult issues requiring critical judgments to be hammered out in tedious negotiations among contending parties. The regulations may be a long time coming, as illustrated by the case of federal architectural barriers where it took 20 years to formulate the final regulations. When such regulations apply to state and local governments, a lengthy process, which sometimes involves changes and reversals in regulatory positions, hampers state and local compliance. Thus, tardy or seemingly insufficient state compliance may be due, in part, to delays and problems in the federal regulatory process.

Every agency—federal or state—that is required to comply with disability rights mandates faces a series of potential barriers. These barriers include negative employer attitudes about persons with disabilities, agency fear of the costs involved in accommodating disabled persons, lack of information about what works and what does not work, unawareness of cost-effective methods of meeting mandates, lack of funds authorized for meeting mandates, lack of information systems and regular communications designed to manage the compliance process, the presence of many other mandates demanding atten-

tion (not to mention primary agency missions), little or no involvement of persons with disabilities in the administration of the compliance process, wavering administrative leadership, and isolation among the many agencies required to comply with the mandates. The size of an agency does not correlate with its compliance record; nor does the fragmentation of compliance responsibilities among agencies, which is a universal reality in both the employment opportunities and barrier removal fields, appear to be a serious impediment to compliance.

6. Several Factors Enhance Compliance with Disability Rights Mandates

Perhaps the most important factor explaining why some agencies have outstanding records of compliance with disability rights mandates is the congruence of their primary missions with the mandate objectives. That is, agencies within the disability rights field and related fields comply more quickly and extensively than do most other agencies. The second most important factor explaining outstanding compliance is strong and unwavering support from top agency leaders.

A major factor in expediting the implementation process within a government is to assign the regulation-writing task to a single agency (as in the case of equal employment opportunities) rather than to a consortium (as was the case with architectural barriers). Other methods of easing the compliance task include identifying low-cost compliance techniques, providing education and training to dispel myths about the capabilities of persons with disabilities and the costs of compliance, providing agencies with the capability to use effective compliance techniques, and establishing resource pools that can be drawn upon when regular agency budgets are too tight to meet identified needs.

7. State and Federal Governments Seldom Share Information and Experiences about Compliance Strategies

Although the state and federal governments face similar mandates concerning persons with disabilities, and experience similar compliance difficulties, they seldom share information and experiences about their activities and approaches. Instead, they often work in isolation from one another, missing opportunities to share techniques and resources.

8. Involving Disabled Persons in Compliance Processes Has Benefits

The difficulties faced by persons with disabilities and the diversity of disabilities experienced by citizens make it difficult for persons without disabilities to recognize many employment and architectural barriers. Even when accommodations are made, they may not be convenient or readily accessible, as in the case of entry ramps for the mobility impaired that are placed at side entrances or rear entrances of buildings. Furthermore, accommodations that appear to be effective to a non-user may not be effective for the disabled user. Non-users also may not recognize a deterioration in older facilities. Persons with disabilities can help agencies dispel employment myths, identify barriers in existing buildings, suggest cost-effective compliance techniques, ensure compliance maintenance, and help to promote universal design principles in new construction so as to avoid future barrier problems.

Recommendations

Recommendation 1:
PROMOTING EQUITY AND EFFECTIVENESS IN MANDATE LEGISLATION

The Commission finds that federal compliance with federal disability rights laws is similar to state compliance. Compliance by federal agencies has been no more and no less variable than compliance by state agencies. Disability mandate compliance also highlights another issue: the Congress sometimes exempts itself from mandates applied to executive agencies and to state and local agencies, and permits exemptions from certain mandates or relief from stringent compliance for some federal agencies. Both federal and state agencies face similar compliance problems, including insufficient funding in some cases; however, difficulties in federal compliance can have adverse effects on state and local compliance. Recognition that the federal government has difficulty practicing what it preaches should lead to a better appreciation for the problems often faced by state and local governments in complying with federal mandates, and to more equitable and effective policy formulation by the federal government.

The Commission recommends, therefore, that the Congress (1) serve as a model of leadership by applying to itself logically applicable mandates similar to those that are placed on federal and state agencies; (2) provide for recognition of the special compliance circumstances of certain state and local agencies similar to its recognition of the special compliance circumstances of certain federal agencies, provided that such agencies bear the burden of proof regarding their special circumstances;(3) not impose sanctions on state and local agencies for noncompliance unless comparable sanctions are imposed on federal agencies for noncompliance; (4) not "pass the buck" to state and local governments by enacting mandates with which the federal government itself would be unable or unwilling to comply, if it were required to do so; and (5) not enact mandates without providing an equitable share of funding to implement the mandates.

In light of the need for such mandates as those guaranteeing the rights of persons with disabilities, and in light of the difficulties encountered in federal and state compliance, the Commission also recommends that the Congress consult more closely with state and local governments when it is necessary to enact mandates affecting those governments in order to identify issues and problems in advance so as to design legislation that will achieve goals more effectively.

Recommendation 2:
FORGING A FULLER FEDERAL-STATE-LOCAL PARTNERSHIP TO PURSUE DISABILITY RIGHTS MANDATES

The Commission finds that despite similarity in the disability rights mandates contained in federal

and state laws, a strong working partnership has not evolved in implementing these mandates. Instead, federal, state, and local governments often work in isolation, independently seeking to comply with disability rights mandates.

The Commission recommends, therefore, that the federal, state, and local governments work in closer partnership to pursue mandates for removing architectural barriers and enhancing employment opportunities for persons with disabilities. One aim of this new partnership should be to enhance sharing of information about strategies used in implementation and their relative effectiveness. Through this type of sharing, successful implementation strategies can be communicated more effectively and emulated throughout the intergovernmental system. The Commission also recommends that the federal, state, and local governments consider greater sharing of resources in working to comply with disability rights mandates. In many communities, federal, state, and local government offices share buildings or are in close proximity to each other. Here, a sharing of resources and services—such as assistive devices or interpreters—would make the most effective use of public sector expenditures to enhance compliance. Intra-agency and interagency resources pools also should be considered to help ease compliance, especially for smaller units.

The Commission recommends, furthermore, that the state and federal governments review each others' disability rights mandates for potential transfers of desirable and effective provisions. Such provisions might include coverage of private employers and private buildings, affirmative procedures for retrofitting older public buildings to remove barriers within specified times, vigilance to ensure that existing provisions for accessibility do not deteriorate over time through unmonitored architectural modifications or operational changes, and greater attention to the removal of communications barriers to the employment of persons with communications disabilities.

Recommendation 3:
IMPROVING DATA COLLECTION TO TRACK COMPLIANCE WITH DISABILITY RIGHTS MANDATES

The Commission finds that both the federal and state governments have not developed systems for gathering and recording data on the extent of physical barriers that exist in public buildings or the efforts that are being undertaken to remove these barriers. The U.S. Equal Employment Opportunity Commission and the Office of Personnel Management do, however, track employment of persons with disabilities in the executive branch. State governments, for the most part, do not regularly gather and disseminate information on the employment of persons with disabilities in the state government work force. Without adequate information on what is being done, it is impossible to judge performance or develop and manage effective strategies for implementation.

The Commission recommends, therefore, that state governments establish systems that track the employment of persons with disabilities in its work force. The system used by the federal government provides a useful model. The Commission also recommends that both the federal and state governments develop more effective means to identify physical barriers in public buildings, and to track proj-ects and initiatives to remove those barriers.

Recommendation 4:
INVOLVING PERSONS WITH DISABILITIES IN THE MANDATE COMPLIANCE PROCESS

The Commission finds that persons with disabilities are insufficiently involved in the process of complying with disability rights mandates, and that substantial opportunities for improving compliance are being lost as a consequence.

The Commission recommends, therefore, that state and federal agencies responsible for complying with disability rights mandates devise and use means of involving persons with disabilities in the mandate compliance process. Means that should be considered include hiring persons with disabilities to help administer compliance programs, surveys of persons with disabilities to determine the extent to which their needs are being met, complaint hot lines to register specific instances where compliance action is needed, and "suggestion boxes" to receive creative thoughts from those having the most intimate experience with the results of compliance programs, such as well-meaning accommodations that cause difficulties or considerable inconvenience for disabled persons.

Recommendation 5:
ENHANCING RESEARCH ON AND DISSEMINATION OF INFORMATION ABOUT COMPLIANCE WITH DISABILITY RIGHTS MANDATES

The Commission finds that individual agencies often work in a vacuum when implementing disability rights programs. The agencies generally have access to administrative regulations and directives, but they do not have extensive information on what other agencies are doing. This type of information can assist implementation greatly, as a given agency learns from the success of others and borrows strategies from agencies facing circumstances similar to its own.

The Commission recommends, therefore, that the federal, state, and local governments encourage

research on implementation practices and performance with regard to disability rights mandates. Included here should be research that describes specific strategies and programs for implementation. Once research findings are obtained, efforts should be made to distribute them broadly so that they can be used by others facing the same mandates.

Recommendation 6: ACCELERATING EDUCATION AND TRAINING EFFORTS

The Commission finds that one consistent impediment to the implementation of disability rights mandates has been persistent and negative attitudes and perceptions about persons with disabilities. Often these negative attitudes are based on misconceptions about the capabilities, aspirations, and needs of persons with disabilities. Such attitudes impede compliance with both employment and barrier removal mandates.

The Commission recommends, therefore, that the federal, state, and local governments take the following actions aimed at breaking down negative attitudes toward, and misperceptions about, persons with disabilities: (1) public service advertisements; (2) programs to train and educate the middle level personnel who make employment decisions, stressing the performance capabilities of persons with disabilities and the wide array of means by which reasonable accommodation can be achieved at low cost; and (3) training programs for facility and property management personnel, stressing the impact of barriers on persons with disabilities, the means by which barriers can be removed, and the types of accessibility guidelines that are applicable to their situation.

1

Federal Regulatory Mandates and Federal Compliance: Intergovernmental Concerns

THE GROWTH OF FEDERAL REGULATORY MANDATES

During the 1970s a very significant shift occurred in the pattern of relationships between the federal government and state and local governments. The initial social welfare programs that grew out of the Johnson administration's Great Society initiative (1964-68) employed federal subsidies to stimulate state and local government action in such areas as poverty, civil rights, urban crime, education, and welfare. By the mid-1970s, however, the pattern of intergovernmental relationships had shifted toward greater use of regulatory mandates as a means of pursuing federal objectives and priorities in states and localities. This trend continued under presidents of both political parties. Indeed, as one analyst argues:

> The Nixon administration . . . presided over and contributed to the greatest expansion of federal regulation of state and local governments in American history. Equally important, this expansion was not accomplished merely through new accretions of traditional grant-in-aid requirements. It was the result of new forms of federal regulations that were more intrusive, more coercive, and more extensive than any before. These new forms of regulations marked such a departure from prior practice that some authorities believed they were ushering in a new era of federal-state relationships.[1]

The regulatory mandate approach differs from the subsidy approach in that mandates rely on directives and required actions, while subsidies focus on the appropriate use of federal funds to initiate public programs. In practice, these approaches are similar. Federal subsidies typically include a variety of requirements or "strings" regarding program operation, and, oftentimes, federal mandates are attached directly to financial transfer programs.[2] Perhaps the primary difference is that subsidies focus on incentives to take action, while regulations center on sanctions that will be taken against state and local governments that do not comply with federal mandates.[3] In many cases, there is another difference as well: mandates may be accompanied with little or no federal funding to help state and local governments with implementation.

Federal regulatory mandates, while often expansive in their objectives, fall into a few major categories. One set concerns civil rights issues; relevant here are mandates intended to eliminate discrimination on the basis of age, sex, race, national origin, and handicap. Another set of mandates focuses on environmental protection and conservation, including programs to clean the air and water, protect the general environment, and reduce the use of harmful

chemicals and pesticides. Still other major regulatory initiatives include those related to promoting a healthy and competitive economy, enhancing safety in the work place, and limiting the political activities of public employees.

The shift from subsidy to mandate has generated several political consequences which, while frequently discussed, have not received systematic empirical examination. One political consequence concerns the costs imposed on state and local governments by federal regulatory mandates. The common wisdom, at least among state and local officials, is that these federal mandates, activated with little or no federal funding, have generated high costs for their governments.

A second and equally important political issue focuses on whether governments at different levels in the federal system are equal and effective partners in the pursuit of the goals of regulatory mandates. At the national level, it is not uncommon for leaders to criticize the speed and effectiveness of state and local implementation of regulatory mandates. This type of concern also runs in the opposite direction, with state and local leaders questioning the commitment of the national government to achieving the objectives of regulatory mandates.

The purpose of this report is to examine the question of *whether the federal government practices what it preaches with regard to effective implementation of regulatory mandates.* This question was chosen by the Advisory Commission on Intergovernmental Relations out of concern for the rising number of federal mandates and for the fact that state and local governments are often criticized for not being full partners or good partners when it comes to pursuing regulatory mandates. Recognizing that concerns and accusations about effective compliance with regulatory mandates abound in the intergovernmental system, the Commission decided that it would be useful to examine systematically the comparative performance of governments in the federal system with regard to regulatory mandates. Implicit in such criticisms of state and local governments is often the assumption that the performance of the federal government in implementing mandates is somehow exemplary. Merely by enacting a mandate, the federal government gains considerable credit for advancing a cause. Yet, in looking at state and local compliance with regulatory mandates, observers often neglect to examine federal agencies.

Examination of this question required the identification of one or more regulatory contexts in which to make comparative assessments. Such contexts need to be those in which the federal government has placed similar mandates on its own operations and on the activities of state and local governments. After reviewing several possibilities, the Commission chose the policy area of disability rights for this comparative assessment of federal and state government achievements in satisfying regulatory mandates.

This report begins by examining the fundamental issues associated with imposition of federal regulatory mandates in the system of intergovernmental relations in the United States. The report describes and compares state and federal laws that mandate rights for persons with disabilities, examines and contrasts national and state government compliance with regulatory mandates, and offers an assessment of the extent of cooperation and partnership that exists in the federal system with regard to implementing these mandates.

STATE AND LOCAL REACTION TO FEDERAL REGULATORY MANDATES

The growth and subsequent decline of federal financial transfers to state and local governments and the ascendancy in relative position of the federal government in the intergovernmental system have raised many questions about the operation of American federalism. While most state and local officials welcomed the federal dollars that became available with the advent of the Great Society and General Revenue Sharing, they simultaneously worried about such things as the (1) diminution of state and local priorities relative to those set by the national government, (2) inefficiencies created by rigid program guidelines not suited to local situations or conditions, (3) additional reporting and bureaucratic procedures required as a condition of receiving federal funds, and (4) movement of the federal government into areas viewed as the traditional domains of state and local governments.

These tensions intensified as the federal government shifted away from subsidies to greater use of regulatory mandates to achieve its policy objectives, while, at the same time, reducing aid to states and localities. Perhaps the greatest difference between the subsidy and regulatory approaches to public policy implementation is that the latter envisions state and local action to meet federal objectives without a substantial infusion of federal funds. Hence, cost concerns by state and local governments are prevalent as these units scrutinize federal regulatory mandates. Typically, state and local governments voice strong objection to the creation of "unfunded" regulatory mandates, the implementation of which requires the use of their own revenues and resources. As one analyst recently noted:

> Increasingly, the word "mandates" is preceded by the adjective "unfunded" when representatives of state and local governments meet to grouse about their federally imposed burdens and expenses in the areas of environmental protection, education, la-

bor management, transportation and civil rights—expenses that have been estimated at more than $100 billion a year nationwide. Congress just keeps on legislating but, in the face of persistent federal budget deficits, it looks to others—businesses and local taxpayers—to pick up most or all of the tab.[4]

In addition to cost concerns, state and local officials have expressed resentment of federal intrusion into policy areas viewed traditionally as the appropriate domain of state and local governance. Even when they support the broad objectives associated with particular federal mandates, these officials would prefer greater state and local discretion in fashioning programs to achieve regulatory mandates.

Edward Koch, the mayor of New York City, has been a vocal opponent of the proliferation of federal regulatory mandates. He has argued that: "Over the past decade, a maze of complex statutory and administrative directives has come to threaten both the initiative and the financial health of local governments throughout the country."[5] Koch argues that federal mandates, which he terms a "millstone" around the necks of local governments, are based on four largely false premises: (1) mandates solve problems, particularly those in which the mandator is not involved; (2) mandates need not be tempered by lessons of local experience; (3) mandates will spontaneously generate the technology required to achieve them; and (4) interference by the federal government in areas more appropriately of state and local concern."[10]

POLICY ADVOCATES AND A DIFFERENT VIEW OF FEDERAL MANDATES

Not all players in American politics share the concerns and worries of state and local governments about the intrusiveness of federal mandates. One set of actors that has consistently pushed for such mandates is policy advocates who see great advantage to federal mandates in their area of policy concern. For example, advocates for such policies as environmental protection or disability rights have found federal mandates an effective means of pushing for a nationwide approach to cleaning up the environment and enhancing the rights and opportunities of persons with disabilities. Policy advocates have found, over time, that it is easier to convince the Congress to recognize their needs and interests than to convince 50 state legislatures and thousands of local governments. Thus, a mandate to take regulatory action, coupled with a significant program of federal funding and judicial remedies, has come to be viewed by these groups as an effective means of pressing for their mandate throughout the nation.

Many members of the Congress, too, have a positive view of regulatory mandates. As one analyst has commented: "Unfortunately for the critics of mandates, members of Congress generally see them not as a problem but as a solution. After years of receiv

namely, whether the federal government, in its own programs and activities, complies with the mandates set for state and local governments. The question is, in other words, *does the federal government practice what it preaches for others?* For some program areas, this is not a relevant question because the federal government delegates operating responsibilities and activities to state and local governments. In these cases, the federal government can preach without having to worry about its own practice. Other regulatory mandates, however, are as applicable to the federal government as they are to state and local governments.

It is in this dual-mandate context that the federal government has been challenged by state and local officials. Their concerns about federal government compliance with its own mandates raise important issues for intergovernmental relations in America. Such mandates include, for example, (1) public employment, where federal mandates prohibiting discrimination on the basis of race, national origin, sex, and handicap extend to all governments in the federal system, and (2) the electric power generated by the federal government's Tennessee Valley Authority and the public utilities operated by many local governments, both of which are subject to environmental protection mandates to achieve improved air and water quality.[13]

First, the perception or reality that the federal government is lax in terms of compliance—a position not infrequently voiced by state and local officials—may work to undermine public confidence in the federal system and the national government. For example, revelations in recent years about damage caused to the environment and to human health by federal nuclear facilities raise serious questions about the degree to which the federal government conscientiously complies with its own mandates.

Second, this perception may work to impede the efforts of state and local governments to comply with such mandates, under the argument that "if they aren't doing it, why should we?"

Third, a better understanding of the comparative dynamics of federal-state compliance can improve future attempts to promote change and formulate effective regulations. Problems of implementation are often attributed to federalism and intergovernmental conflict; yet, without a comparative analysis of federal agency compliance, we cannot determine which problems lie in intergovernmental relations and which problems lie in the institutional characteristics of government bureaucracies per se.

Fourth, questions about whether the federal government practices what it preaches suggest significant problems of intergovernmental communication. The rhetoric that accompanies mandates often implies that all governments in the system will work together to address the problems. Suspicions about federal government compliance suggest that there is insufficient communication about what is being accomplished by federal, state, and local governments. These suspicions and misperceptions signal that there is not an effective working partnership among governmental levels regarding the implementation of regulatory mandates.

If there were such an effective partnership, one would expect the different governments to share information on mandate implementation practices, experiments, successes, and failures. In this way, what has worked in one place could be transferred, where applicable, to other places. Similarly, information concerning initiatives that have not been successful could help other jurisdictions to avoid the same pitfalls.

Finally, federal government compliance with its own mandates is crucial for promoting equity, fairness, and balance in the federal system. By carefully scrutinizing its own compliance practices, the federal government can develop a better appreciation of the problems that often confront state and local governments.

REGULATORY COMPLIANCE AND DISABILITY RIGHTS MANDATES

The central research question to be explored in this study, then, concerns assessment of the extent of federal government compliance with the regulatory mandates it has imposed on itself and on state and local governments. This question will be examined primarily in the context of one major federal regulatory mandate: enhancement of the rights and opportunities of persons who experience mental or physical disabilities.[14] Beginning in the late 1960s, the federal government enacted a set of laws aimed at reducing discrimination against disabled persons and enhancing their access to the full range of opportunities available in contemporary society. By the mid-1980s, the federal government had imposed mandates on itself and those who receive federal financial assistance to (1) end discrimination based on handicap, (2) increase the employment of disabled individuals, and (3) eliminate architectural barriers that impede access to public buildings and facilities. It also created mandates for state and local governments to enhance the access of physically impaired persons to public transit systems and to provide a free and individually designed education to all handicapped children.

Two aspects of the disability rights mandate will receive primary attention here: (1) removal of architectural barriers that impede the access of physically handicapped individuals to public buildings and (2) employment protections for disabled persons.[15] These two policy areas are, for several reasons, appropriate ones in which to consider federal govern-

ment compliance with regulatory mandates. There is a clear parallel between the mandated responsibilities of the federal government and state and local governments. Through various statutes, the Congress has imposed mandates on both the federal government and recipients of federal funds (i.e., all state governments and a large number of local governments) to remove architectural barriers and undertake efforts to enhance the employment opportunities of persons with disabilities.[16] All levels of government employ workers and operate a variety of public buildings, although many of the smaller local governments have very small staffs and, in some cases, no full-time employees. Therefore, there are direct parallels in the actions and mandated responsibilities between the federal government, the states, and many local governments.

In addition to assessing federal government compliance, this study will also examine state efforts to create and enforce disability rights mandates. Laws and mandates created by the federal government will be compared and contrasted to those enacted by states and, where data permit, evidence will be presented about the state implementation of disability rights policies.

INFLUENCES ON COMPLIANCE WITH FEDERAL MANDATES

Not only will this study seek to measure and compare federal and state government compliance with disability rights mandates, it will also move to the very important question of the impact of organizational and administrative factors on federal and state agencies' effectiveness in compliance. It is not enough to provide a report card on the comparative performance of federal and state governments. It is important to go beyond this question to understand the factors that serve to enhance or impede compliance with disability rights mandates.

Because many organizational factors can be changed and manipulated more easily than other social and economic factors, the organizational context is important. In this regard, the study will consider the impact of the following organizational variables on compliance with disability rights mandates:

The extent of fragmentation of implementation authority across government agencies;

The commitment of agency leadership to disability rights mandates and objectives;

The degree of congruence between an agency's primary mission and the disability rights mandate;

Agency size, resources, and autonomy, especially as these offer opportunities for and constraints on compliance;

The urgency with which the public or governmental leaders perceive that mandates must be achieved;

The level of competition of disability rights mandates with other mandates and public policies being implemented;

The extent of communication among administrative agencies responsible for mandate enforcement; and

The cost of implementing federal mandates, both in terms of manpower commitments and resource allocations.

Through analysis of these and other influences, this report identifies how organizational factors relate to agency compliance with mandated barrier removal and employment protections.

A related and important issue concerns how the federal government organizes to enforce a mandate on its own agencies. While there is an extensive literature on the regulation of private companies and state and local governments, there is little scholarly analysis of how a government structures itself to monitor its own activities in order to achieve mandated goals. This would seem to be an important question, especially if James Q. Wilson and Patricia Rachal are correct in their supposition that "it is easier for a public agency to change the behavior of a private organization than of another public agency."[17] Often, to police itself, the federal government has created some form of watchdog agency, responsible for monitoring compliance with mandates. Examining the relationship between the watchdog agency and other federal agencies should shed light on the question of whether the federal government can actually regulate itself in terms of policy mandates, including those related to architectural accessibility and employment protections for persons with disabilities.

Another significant research question that has received little systematic analysis concerns the fiscal impact of federal regulatory mandates on state and local governments. Although there is substantial rhetoric generated by displeased local officials, "remarkably little attention has been given to the mounting costs that federal regulation now imposes on local governments—even though these costs are, in many cases, a significant element in the heavy revenue demands of those governments."[18] Several analysts have, however, documented the difficulties in determining the costs imposed on state and local governments by federal regulatory mandates. One has noted that: "For every mandate, costs vary from one state, city, county, school district or power authority to the next, depending on such factors as population and the extent to which a locality already is providing the mandated service. Also, the costs can include in-

determinate capital and administrative expenses, which might change once federal agencies formulate whatever regulations are necessary to carry out Congress' often vague intent."[19]

One of the few studies to examine the question of the impact of federal mandates on municipal finances was conducted by Thomas Muller and Michael Fix. Through a study of seven cities, they estimated that federal mandates have added, on the average, $25 per capita to local government operating costs.[20] Given the potential fiscal impact of federal mandates, the cost issue will be an important one to consider in the context of regulatory compliance.

Also to be considered in this study is how broader social, economic, and political factors affect the implementation of disability rights and the extent of compliance with mandates. Included in this context will be consideration of how social attitudes about disability, both generally and with regard to handicapped individuals in the work place, affect the opportunities of America's disabled population. Also important is the growing political clout and sophistication of interest groups representing persons with physical or mental disability.

OUTLINE OF THIS REPORT

This first chapter has identified the basic research question of this study: how do federal and state governments comply with regulatory mandates for architectural barrier removal and employment protections for persons with disabilities? The next chapter profiles social, physical, and attitudinal barriers that persons with mental and physical disability face when seeking to enjoy the benefits of modern society. It also presents an overview of federal disability rights laws.

Chapter 3 traces the legislative history and administrative regulations for relevant disability rights laws, with specific attention given to the *Architectural Barriers Act of 1968* and the *Rehabilitation Act of 1973*. The political nature of lawmaking and regulation drafting provides insights into factors that may impede and frustrate compliance with disability rights mandates.

The fourth chapter examines the current status of state laws regarding architectural accessibility and employment protections for persons with disabilities. These are then contrasted with federal policies. The fifth chapter sets the stage for examining the primary empirical question underlying this study: what is the extent of compliance with disability rights provisions? Chapters 6 and 7 present findings on the extent of compliance by state and federal agencies, looking first at employment protection programs and then at architectural barrier removal.

The final chapter presents an overview of findings, assesses the extent of federal and state government compliance with disability rights mandates, and evaluates factors that impede successful attainment of regulatory objectives. Finally, the chapter presents recommendations about future actions to modify disability rights policies and the practices used to implement them. The objectives here are two-fold: (1) to improve the ability of individual governments to achieve architectural accessibility and remove employment discrimination against individuals with disabilities and (2) to improve the ability of the intergovernmental partnership achieve the goals of disability rights mandates.

The fact that this report focuses largely on the laws and practices of the federal and state governments is not intended to suggest that the laws, policies, and actions of local governments are unimportant to pursuit of disability rights mandates. To the contrary, local actions are very important. The reason that this report does not study local government practices more fully is a practical one; the project lacked the resources necessary to gather adequate data concerning the laws and implementation practices of localities across the nation. Local action and performance with regard to disability rights mandates remains an important issue for future research.

NOTES

[1] Timothy Conlan, *New Federalism: Intergovernmental Reform from Nixon to Reagan* (Washington, DC: The Brookings Institution, 1988), p. 84.

[2] For a more detailed discussion of the difference between subsidies and federal mandates, see ACIR, *Regulatory Federalism: Policy, Process, Impact and Reform* (Washington, D.C: Advisory Commission on Intergovernmental Relations, 1984), pp. 3-4.

[3] Alan Stone, *Regulation and Its Alternatives* (Washington, DC: Congressional Quarterly Press, 1982).

[4] Jacqueline Calmes, "Bricks without Straw: The Complaints Go on but Congress Keeps Mandating," *Governing* (September 1988), p. 21.

[5] Edward I. Koch, "The Mandate Millstone," *The Public Interest* (Fall 1980), pp. 42-57.

[6] Ibid., pp. 43-44.

[7] Ibid., p. 57.

[8] 469 U.S. 528 (1985)

[9] 108 S.Ct. 1355 (1988).

[10] Robert M. Isaac, "The Sick Chickens Have Come Home to Roost," *Colorado Municipalities* (January/February 1988), p. 15. See also ACIR, *Federalism and the Constitution: A Symposium on Garcia* (Washington, DC: Advisory Commission on Intergovernmental Relations, July 1987).

[11] Calmes, "Bricks without Straw," p. 22.

[12] ACIR, *Regulatory Federalism*, pp. 68-69.

[13] For a discussion of the interaction of TVA and the Environmental Protection Agency over clean air and water mandates, see Robert F. Durant, *When Government Regulates Itself: EPA, TVA, and Pollution Control in the 1970s* (Knoxville: University of Tennessee Press, 1985).

[14]Members of the disability community currently prefer to be referred to as "persons with disability," with the expectation that this phrase first connotes the conception of a person being an individual and only secondarily recognizes a person's experience with some form of disabling condition. While empathizing with this semantic preference, it becomes awkward and redundant to consistently use this phrase throughout a long analysis. Therefore, this term will be interchanged with others; however, the phrases "handicapped" and "disabled" will be used only as adjectives and not as nouns, as is preferred by the disabled community.

[15]Federal government compliance with federal mandates for architectural accessibility and employment protections for persons with disabilities are broad questions worthy of study. At the same time, this study will necessarily be examining only a subset of relevant questions related to the disability rights mandate. It leaves for future study questions related to implementation of and compliance with disability rights policies related to public education, removal of communications barriers, and public transit.

[16]As will be clear in the next chapter, the accessibility and employment mandates imposed on agencies of the federal government are not completely identical with those placed on state and local governments. The objectives in both cases, however, were very similar: to enhance the access of physically handicapped persons to public buildings and services and to remove discrimination in employment.

[17]James Q. Wilson and Patricia Rachal, "Can Government Regulate Itself?" *The Public Interest*, (Fall 1976), p. 4. See also Durant, *When Government Regulates Itself.*

[18]Thomas Muller and Michael Fix, "Federal Solicitude, Local Costs: The Impact of Federal Regulations on Municipal Finances," *Regulation* (July/August 1980), pp. 29-36.

[19]Calmes, "Bricks without Straw," pp. 23-24.

[20]Muller and Fix, "Federal Solicitude, Local Costs," p. 31.

2
Disabled Americans and the Barriers They Face

In an effort to provide contextual background, this chapter presents a brief overview of Americans with disabilities and the wide range of physical, social, communication, and attitudinal barriers that prevent them from participating in the full range of opportunities that exist in America.

A PROFILE OF DISABLED AMERICANS

Many Americans are basically unaware of the needs and capabilities of persons with disabilities; neither are they cognizant of the many barriers that persons with disabilities face when seeking to take advantage of the opportunities that others take for granted. Yet, that awareness is essential to understanding policies and programs designed to protect the rights of persons with disabilities.

Probably the most current and comprehensive profile of disability in America—including measures of the nature, extent, and impacts of handicapping conditions—is presented in a study conducted for the International Center for the Disabled (ICD) in 1986.[1] This study was the first intended to examine the attitudes and experiences of disabled persons. A major aim of the survey was to discover the self-perceptions of persons with disabilities; how their lives had changed in the last decade; their experiences with employment, education, and social life; and what must be done to increase their participation and opportunities in mainstream American society.

The survey was based on approximately 1,000 telephone interviews conducted with a national sample of noninstitutionalized disabled persons aged 16 and over. To obtain this sample, Louis Harris, Inc., the polling firm conducting the study, first screened 12,500 randomly selected households to see if they included a disabled person. Persons were considered to be disabled if they (1) had a disability or health problem that prevented them from participating fully in work, school, or other activities; (2) said that they had a physical disability of some kind; or (3) considered themselves, or others would consider them to be, disabled. By screening on these criteria, it was found that the prevalence of disability among the sample was about 15 percent of those aged 16 and over. Extrapolation from the sample to the general population suggests that as many as 27 million Americans experience some form of disability.[2]

The Impact of Disability on Economic and Social Conditions

The survey findings indicate that, as a whole, disabled Americans have far less education, lower household incomes, and greater poverty than nonhandicapped citizens. In terms of education, the survey shows that 40 percent of disabled persons did not finish high school, and of those who did graduate nearly two-thirds did so in middle age. About half of

the handicapped respondents reported household incomes of $15,000 or less.

Survey findings also provide clear evidence on the impact of disabling conditions on the social lives of these persons. About two-thirds of those interviewed said that their disability prevents them from getting around, socializing outside, and attending cultural or sports events as much as they would like.

Disability and Employment

The survey contained several questions about employment status, aspirations, and perceived barriers to finding a job. The major finding: "Not working is perhaps the truest definition of what it means to be disabled."[3] Two-thirds of all disabled persons between the ages of 16 and 64 said that they were not working. Only 25 percent reported working full time, while 10 percent worked part time. Not working is not the preferred status of many handicapped persons, however. A large majority of those not working reported that they would like the opportunity to be employed, which is seen as the primary means to enhance both social and economic status. Many of those not working reported receiving insurance benefits or government support payments.

Barriers to Social Opportunities and Employment

The ICD survey queried handicapped respondents about what they perceived to be barriers to enjoyment of the full benefits of social life in America. Responses included the following: (1) fear that their disability will cause them to get sick, hurt, or victimized by crime; (2) the need for help from other people in getting around; (3) lack of access to public transportation or someone to provide transportation; and (4) lack of access to public buildings and facilities. About half of the handicapped respondents cited transportation problems as an impediment to their social activities, while 40 percent cited facility access and usability as problems reducing social opportunities.

Different kinds of barriers were identified as impediments to becoming employed and advancing in employment. Discrimination is one important obstacle, reported by one out of four respondents. Many others said that employers do not recognize that they are capable of holding down a full-time job. Transportation problems represent employment barriers to about 30 percent of respondents. On a more positive note, of those working or who have worked, about one-third reported that employers have made some form of accommodation for their disability. This accommodation action may be partially the result of federal laws that require federal agencies, recipients of federal funds, and federal contractors to make reasonable accommodations to employ persons with disabilities.[4]

Figure 2-1
Highlights of ICD Study of Disabled Americans (1985)

Personal and Educational Characteristics

40% of disabled persons aged 16 years and older did not finish high school, as compared to 15% of nondisabled persons

57% of handicapped individuals said that their disability prevented them from reaching their full potential as a person

50% of disabled people aged 16 and over had a household income of $15,000 or less, as compared with 25% of nondisabled persons

56% of disabled individuals said that their disability prevents them from getting around, attending cultural and social events, and socializing with friends outside of the home

Employment Characteristics

66% of disabled persons aged 16-64 were not working

65% of nonworking individuals with handicaps said that they would like to be working

84% of those working full or part time were satisfied or somewhat satisfied with their job

Barriers to Entering the Mainstream

49% of disabled persons reported that they were not able to use public transportation, get special transportation services, or get a ride when they needed one

47% of working age disabled people, not working or working part time, said employers did not recognize that they are capable of full-time employment

40% of disabled respondents said mobility and activities were limited because they could not enter public buildings/places or because such places lack rest rooms they could use

28% of disabled people who were not working cited lack of accessible or affordable transportation as an important reason for not working

25% of working age disabled persons said that they have encountered job discrimination because of their disability

Source: International Center for the Disabled, *The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream.* Survey conducted for ICD by Louis Harris and Associates. Survey results are based on interviews with 1,000 persons with disabilities during November and December of 1985.

Changes in the Past Decade

Another set of questions in the ICD survey concerned the perceptions of persons with disabilities about how their lives have changed in the past ten years. Seventy percent of all disabled citizens and 58 percent of severely handicapped persons reported that their lives had improved in the last decade. Much of the credit for this improvement was given to federal government efforts; two-thirds of the respondents stated that the federal laws passed since the late 1960s give better opportunities to disabled Americans. At least at the perceptual level, then, federal disability rights policies have been successful in improving the quality of life of disabled persons. Unfortunately, but typical of such polls, no questions were included in the survey about the impact of state and local laws.

BARRIERS TO PARTICIPATION IN MAINSTREAM SOCIETY

The most obvious barriers to enjoying the benefits and opportunities of modern society for many persons with disabilities are the physical ones that citizens, building designers, and planners are gradually coming to recognize as unnecessary and removable. Included are barriers that prevent or make it difficult for physically disabled persons to gain access to public transit facilities and vehicles. Other barriers are rooted in the attitudes of individuals, treatment by medical professionals, and broader social customs and traditions. Still another set of barriers relates to obstacles to communication. These are most significant to those with hearing and visual impairments. Cumulatively, these barriers have had a devastating effect on persons with mental and physical disabilities, and pulling these barriers down is proving to be a demanding and long-term process.

Institutionalization

Placing disabled individuals in custodial institutions, until recently a common practice for many mentally handicapped persons and some physically disabled ones, obviously prevented these individuals from enjoying opportunities available to nondisabled persons. Severe disabilities would have prevented some of these persons from ever taking advantage of social opportunities, but institutionalization of many other disabled persons led professionals and family members to ignore their potential abilities and contributions. It is also evident that the treatment and living conditions in institutions caused harm to or regression in many persons placed there.

Architectural and Physical Barriers

The extent and impact of physical and architectural barriers were documented in the late 1960s as American society began to awake to the needs of its disabled population. A major report by the National Commission on Architectural Barriers to Rehabilitation of the Handicapped found the following:[5]

- The greatest obstacle to employment of handicapped persons is the physical design of buildings and facilities that they must use.
- Virtually all of the buildings and facilities most commonly used by the public have features that bar use by disabled individuals.
- The provision of medical and educational services to handicapped children is impaired by physical barriers in public facilities.

The commission report had little trouble pinpointing the culprit responsible for physical barriers: widespread neglect of the needs of disabled persons by building designers and contractors. In the report's words: "The most common causes of inaccessibility are due entirely to failure to think of the needs of the handicapped at the design and planning stage."[6]

The most positive aspect of the report was its assessment that, "New facilities built and equipped to accommodate the handicapped cost little or no more to construct than buildings designed for the able bodied."[7] This conclusion has been corroborated by other studies, which have found that the cost of adding accessible features to newly constructed buildings adds only 1 or 2 percent to building costs. The more difficult and costly problem is the renovation, retrofitting, or redesign of existing buildings and facilities. Yet, even here, accessibility modifications can often be done reasonably and without great expense.

Transportation Barriers

The inability of persons with disabilities to move freely within their community limits or prevents social and economic activity outside the home. Many types of physical impairments and some mental ones prevent reliance on a private automobile as a regular mode of transportation. For this reason, persons with disabilities must often rely on public transportation systems that frequently have built-in barriers.

A comprehensive study commissioned by the U.S. Department of Transportation (DOT) in the late 1970s cataloged the transportation needs of handicapped persons and the barriers that impede their access to public transit systems.[8] Among the highlights of the study were the following:

- There are over 7.4 million transportation-handicapped persons in America, representing 5 percent of the urban population over 5 years of age.
- Transportation-handicapped people include those who use mechanical aids, have hearing or visual dysfunctions, or use a wheelchair.

- Compared to non-transportation handicapped people, those with such handicaps take (1) fewer trips in general, (2) more trips of a medical or therapeutic nature, (3) fewer shopping and personal business trips, and (4) fewer recreation and leisure trips.
- The bus is the dominant mode used by transportation-handicapped persons, whereas subway systems are used much less frequently.

The DOT study also documented the transportation barriers faced by persons with disabilities:

- Nineteen percent of transportation-handicapped persons cannot use public transportation at all, and 30 percent can use it only with a great deal of difficulty.
- Mobility barriers include the entire process of using public transit systems, not only vehicle features.
- Specific barriers are related to each mode of public transit. For buses, common problems include difficulty in getting on and off and riding while standing, physical problems in waiting for buses to arrive at the stop, and getting to the bus stop. For subways, problems included difficulties with steps to and from the subway platform and traveling to the subway stop. And for taxis, the primary barrier is affordability, along with difficulties in getting in and out of vehicles.

Finally, the study examined what it called latent travel demand, that is, the projected increase in the use of transit systems by disabled persons if better options were available. Transportation-handicapped persons would, according to the study, take 29 percent more trips and about 2 percent would start working if better transportation were available.

Communications Barriers

A less frequently recognized barrier results from obstacles to communication arising from visual, hearing, and other impairments. Technological developments have helped to overcome some obstacles, but many remain. For example, persons with severe hearing impairments can use special TTY telephones where messages are typed rather than spoken. This technology, however, is expensive. Closed captioning for televisions has similarly helped to open this communication medium to individuals with hearing impairments. As with all technology, access to devices that enhance communication is often determined by ability to pay, and handicapped persons, who experience more poverty and unemployment than other citizens, are less able to afford costly communications equipment.

Attitudinal Barriers

Probably the most significant barriers faced by persons with disabilities relate to the attitudes, predispositions, and behaviors of nondisabled persons. Such attitudes range from negative views of disability to discomfort in associating with people who experience some form of disability. The nature and extent of attitudes about disability have been documented through an extensive set of research studies conducted in many settings.[9] One common finding is that nonhandicapped people tend to be preoccupied with disabling conditions and often are incapable of seeing beyond these conditions to the whole person. As Duane Stroman has argued, "People tend to think in terms of a handicapped person rather than a person with a handicap. It is imagined or perceived that it is the central life experience of that person and influences all his other mental and social abilities."[10] Such predispositions lead nondisabled persons to overlook or ignore the full range of abilities of persons with disabilities.

Social stigma has frequently been associated with many forms of mental and physical disability, generating reactions of pity, helplessness, distrust, uneasiness, and fear. These reactions, in turn, serve as potent barriers to the participation of disabled persons in many forms of social activity. As Erving Goffman has argued, stigma is often a strong source of discriminatory thoughts and actions: "The attitudes we normals have toward a person with a stigma, and the actions we take in regard to him, are well known, since these responses are what benevolent social action is designed to soften and ameliorate. By definition, of course, we believe the person with a stigma is not quite human. On this assumption, we exercise varieties of discrimination, through which we effectively, if often unthinkingly, reduce his life chances."[11] Because nondisabled persons do not understand the realities of disability, they often have negative and paternalistic views of individuals with disabilities.

The attitudes and conceptions of health care professionals have also been identified as a source of discriminatory action and beliefs. John Gliedman and William Roth have made this argument:

> For many generations mainstream society's attempts to deal humanely with the disabled and the professional's vision of the nature of disability have been shaped by a host of mutually reinforcing paradigms. Starting from different intellectual premises, these frameworks have converged to produce a set of flawed assessments of the disabled person's needs and the place of the disabled in American society. Indeed, despite their condemnations of prejudice toward the disabled, these models share far more with

long-standing myths and stereotypes about handicaps than has generally been recognized.[12]

Researchers have shown that potential employers and coworkers have negative views and expectations about the productivity and reliance of workers with some form of mental or physical disability. As Peter Jamero has noted, "Employers, more often than not, appear more inclined to judge handicapped persons on the basis of disability rather than on what they are capable of performing."[13] The reluctance of employers to hire persons with disabilities is rooted in common myths and misunderstandings, including the notions that the employment of disabled workers will increase insurance and worker compensation costs, lead to higher absenteeism, harm efficiency and productivity, and require expensive accommodations.[14]

These misperceptions about disabled persons in the work place are illustrated further in a study conducted by the Canadian Chamber of Commerce, which polled its members on reasons why they had not hired handicapped workers.[15] Among the answers given were that firms (1) thought they had no suitable jobs for handicapped workers, (2) never thought of hiring them, (3) considered it too costly and dangerous in terms of insurance premiums, (4) had buildings that were unsuitable, (5) feared that absenteeism and employee turnover would increase, and (6) feared reduced productivity. These attitudes, common to many employers in the United States, have persisted despite empirical evidence from several quarters that disabled workers perform at levels equal to or superior to other employees.[16]

Barriers: The Cumulative Impact

Together, physical, social, communication, and attitudinal barriers have, for generations, worked to constrain the social and economic opportunities of persons with disabilities. Many physical and social barriers were erected not through malice but through neglect. The impact of barriers, however, despite their source, has had a crippling influence on the lives of millions of persons who experience some form of mental or physical disability. In this regard, Sonny Kleinfield argues that: "Had clumps of handicapped people settled the colonies, most disabled people believe, America today would be totally accessible to the handicapped. But that ain't the way it happened, and the halt and lame have been mired in obscurity for two hundred years. They have been locked away in institutions, crowded into attics, shuttled into basements. . . . They became the hidden minority, their plight stored painfully in their heads and shared only with equally disabled individuals."[17]

It is important to recognize that many barriers to mainstream life are interrelated and cumulatively generate a negative impact on disabled individuals. Consider transportation barriers. Even if a person with a disability is able to work and can locate a job, without some form of usable and reliable transportation, he or she will not be able to become employed. Similarly, negative attitudes about disability can harm many aspects of the lives of citizens with handicaps, including reducing social relationships and finding employment. It is against this background, then, that advocates began in the 1960s to remove barriers and enhance opportunities for persons with disabilities.

NOTES

[1] *The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream*, a study conducted for the International Center for the Disabled, in cooperation with the National Council on the Handicapped. The actual survey research for the study was done by Louis Harris and Associates, Inc. (New York: ICD, 1986).

[2] It should be noted that when a disabled person was unavailable for an interview, or unable to be interviewed, a proxy was chosen who knew most about that person. About 17 percent of the interviews were conducted with proxies. This strategy has caused some persons to question the validity of the study's findings. While this approach raises some questions, this study remains the only comprehensive survey of the disabled community in America.

[3] *The ICD Survey of Disabled Americans*, p. 4.

[4] The federal laws that stipulate reasonable accommodation requirements as well as affirmative action for disabled persons are reviewed in the next chapter.

[5] National Commission on Architectural Barriers to Rehabilitation of the Handicapped, *Design for All Americans* (Washington, DC: U.S. Department of Health, Education, and Welfare, 1967).

[6] Ibid., p. 3.

[7] Ibid.

[8] Urban Mass Transit Administration, *Summary Report of the National Survey of Transportation-Handicapped People* (Washington, DC: U.S. Department of Transportation, 1978).

[9] For a thorough literature review of research on attitudes toward persons with disabilities see John G. Schroedel, *Attitudes Toward Persons with Disabilities: A Compendium of Related Research* (Albertson, N.Y.: Human Resource Center, 1979).

[10] Duane F. Stroman, *The Awakening Minorities: The Physically Handicapped* (Washington, DC: University Press of America, 1982), p. 52.

[11] Erving Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (New York: Prentice-Hall, Inc., 1963), p. 5.

[12] John Gliedman and William Roth, *The Unexpected Minority: Handicapped Children in America* (New York: Harcourt, Brace, Jovanovich, 1980), p. 17.

[13] Peter M. Jamero, "Handicapped Individuals in the Changing work force," *Journal of Contemporary Business* 8 (1979), p. 38.

[14] See, for example, Robert B. Nathanson, "Campus Interactions: Attitudes and Behaviors," in John P. Hourihan, ed., *Disability: The College's Perspective* (New York: Teachers College, Columbia University, 1980); Duane F. Stroman, *The Awakening Minorities: The Physically Handicapped*; Dennis E. Mithaug, "Negative Employment Attitudes Toward Hiring the Handicapped: Fact or Fiction?" *Journal of*

Contemporary Business 8 (1979), pp. 19-26; Joann S. Lublin, "Lowering Barriers: Pressured Companies Decide the Disabled Can Handle More Jobs," *Wall Street Journal,* January 27, 1976.

[15]Suzan Pacquette, "Hiring the Handicapped: Fact and Fantasy," *The Labour Gazette* (April 1976), pp. 184-188.

[16]See E.I. DuPont de Nemours and Company, *Equal to the Task* (Wilmington, Delaware: E. I Dupont de Nemours and Company, 1982); Gopal C. Pati, "Countdown on Hiring the Handicapped," in Allen D. Spiegel and Simon Podair, eds., *Rehabilitating People with Disabilities into the Mainstream of Society* (Park Ridge, New Jersey: Noyes Medical Publications, 1981); Ronald E. Lucas, "Why It's Good Business to Hire the Handicapped," *Occupational Hazards* (March 1975), pp. 61-62; and Jack R. Ellner and Henry E. Bender, *Hiring the Handicapped* (New York: American Management Associations, 1980).

[17]Sonny Kleinfield, *The Hidden Minority: A Profile of Handicapped Americans* (Boston: Little, Brown and Company, 1979), p. 22.

3

Federal Disability Rights Policies: Content and Development

Following on the heels of civil rights movements for racial minorities and women, a push to advance the rights and opportunities of persons with mental and physical disabilities began in the late 1960s and continues to the present day. This chapter traces the development of federal government laws and administrative regulations regarding architectural accessibility and employment of disabled persons. The mandates created through these laws and regulations require that a large set of actors—including agencies of the federal government, recipients of federal financial assistance, and those who contract with the federal government—take actions to enhance the opportunities of persons with disabilities.

The chapter begins with an examination of the *Architectural Barriers Act of 1968*, tracing the legislative enactment, creation of administrative regulations, and policy execution. This act lies at the heart of federal government policy to remove architectural and other barriers in its facilities and buildings that prevent persons with disabilities from gaining access to public services and employment. The chapter also examines key provisions of the *Rehabilitation Act of 1973*, including section 501, which requires agencies of the federal government to engage in affirmative action to employ persons with disabilities, and section 504, the linchpin of disability rights policies.

THE ARCHITECTURAL BARRIERS ACT

The federal mandate to remove architectural impediments in its own buildings began to take form in the mid-1960s when the Congress, as part of the 1965 amendments to the *Vocational Rehabilitation Act*, commissioned a study to examine what needed to be done.[1] This study, prepared by the National Commission on Architectural Barriers to the Rehabilitation of the Handicapped and released in 1968, concluded that: "More than 20 million Americans are built *out* of normal living by unnecessary barriers: a stairway, a too-narrow door, a too-high telephone. At the right moment, their needs were overlooked."[2] The commissions's report also concluded optimistically that: "In time, the last vestiges of such thoughtlessness will disappear from the American scene."[3] Included in the commission report was a series of recommendations for new federal legislation, including a call for the Congress to enact laws requiring that federal government buildings and facilities be designed without physical barriers and that barriers in existing buildings be removed.

Given the commission's strong recommendations for legislative and administrative initiatives and the growing public awareness of the mobility plight of physically handicapped persons, Congress enacted the *Architectural Barriers Act in 1968*. Signing the bill into law, President Lyndon B. Johnson stated that: "It will assure that architectural barriers to the handi-

capped are eliminated in all buildings constructed with public funds from this day on—and will correct many errors of the past."[4] The act stipulates that:

> Every applicable building designed, constructed, or altered after the effective date of the act be accessible in accordance with specified accessibility standards.
>
> Applicable buildings are those (1) whose intended use requires access by the public or may result in the residence or employment of handicapped persons (excluding privately owned residential structures and buildings on military installations intended for able-bodied personnel); and (2) which are constructed or altered by or on the behalf of the federal government, leased by the federal government, or financed in whole or part by the federal government.
>
> The Administrator of the General Services Administration (GSA), in consultation with the Secretary of Health, Education, and Welfare (now Health and Human Services—HHS), is authorized to develop accessibility standards for nonresidential, nonmilitary buildings.
>
> The Secretary of Defense (DOD), in consultation with the Secretary of HHS is authorized to develop accessibility standards for buildings and facilities used by the military.
>
> The Secretary of Housing and Urban Development (HUD), in consultation with the Secretary of HHS, is authorized to develop accessibility standards for relevant residential structures.
>
> The Administrator of GSA, sometimes in consultation with the Secretary of DOD or HUD, is permitted to grant waivers to accessibility standards on a case-by-case basis on determination that the waiver is "clearly necessary."

The act specifies four standard-setting agencies—the departments of Defense and Housing and Urban Development, the U.S. Postal Service (USPS), and the General Services Administration—as responsible for developing accessibility standards for federal buildings and facilities. (These agencies are responsible for most federal buildings.) The law stipulated that these agencies confer with the Department of Health, Education, and Welfare when designing accessibility standards.

The General Services Administration issued relatively brief administrative regulations in 1969,[5] which specified the accessibility standards devised by the American National Standards Institute (ANSI) in 1961 as the appropriate technical guidelines for compliance with the accessibility mandate. Following GSA's lead, the other three agencies began to develop accessibility guidelines.

Creation of the Architectural and Transportation Barriers Compliance Board

With section 502 of the *Rehabilitation Act of 1973*, the Congress created the Architectural and Transportation Barriers Compliance Board (ATBCB). The law specified that the ATBCB be composed of the heads (or their designees) of eight cabinet departments and agencies. The functions of the new board were to: (1) ensure compliance with accessibility standards; (2) investigate and examine alternative approaches to architectural, transportation, and attitudinal barriers confronting handicapped persons; (3) determine measures taken by the federal, state, and local governments to eliminate barriers; (4) promote the use of the international accessibility symbol; and (5) report to and advise the President and Congress on matters relating to barrier removal and accessibility in the federal government.

In 1974, the Congress amended the *Rehabilitation Act* and made some changes in the ATBCB. One change clarified leadership on the new board by designating the Secretary of HEW to be chairman; this move was based on the grounds that most federal programs dealing with disabled persons were located in that department. Another change was intended to enhance citizen participation by empowering the ATBCB to appoint a consumer advisory panel, a majority of whose members would be handicapped persons. The intended purpose of the citizen panel was "to provide guidance, advice, and recommendations to the board in carrying out its functions."[6]

Early Implementation Experiences and Reactions

Implementation of barrier removal progressed throughout the early 1970s. In 1975 the head of GSA reported that implementation was proceeding smoothly.[7] However, in that same year, the General Accounting Office (GAO) issued a report critical of implementation efforts, sparking concerns in Congress about strengthening the barrier removal mandate.[8]

The GAO surveyed more than 300 federally financed buildings and found that: (1) none of the buildings was completely free of architectural barriers, (2) buildings then being designed were only slightly more barrier free than those designed and constructed before passage of the law, and (3) there had been only about a 10 percent improvement in compliance with ANSI guidelines.

In addition to identifying problems with implementation, the GAO report highlighted what it saw as deficiencies in the statutory language. First, the report noted that the definition of "building" under the

act was narrow and did not include leased buildings whose construction or alteration was done without federal government supervision. Second, the report noted that the Postal Service, despite its need for extensive federally provided offices, was not covered by the law.

Reflecting the reaction of many legislators to the GAO findings, Representative James Cleveland (R-NH) commented: "I find it is a shocking commentary on our system of values that more has not been done to make public buildings accessible to the physically handicapped. Further, I find it is also a sorry commentary on the responsiveness of the Federal Agencies. . . ."[9]

In 1976, largely as the result of the GAO study, the Congress amended the *Architectural Barriers Act* through passage of the *Public Buildings Cooperative Use Act.* The amendments (1) placed the U.S. Postal Service under the act's provisions, (2) extended coverage to all leased and privately owned residential units used for the purpose of public or federally subsidized housing, and (3) required the issuance of accessibility standards.

Responding to the 1976 statutory changes, the General Services Administration embarked on a 14-month period of updating its regulations for implementing the *Architectural Barriers Act.* Two sets of proposed rules were issued, one in February and the other in September 1976.[10] The definition of buildings covered by the act was extended to all buildings leased by the federal government after January 1, 1977.[11] The ANSI standards, revised in 1971, were to be followed in making accommodations. Exceptions to accessibility requirements were specified, including cases where (1) the building, by its purpose, was not intended to be used by the public or handicapped persons, (2) alterations were not structurally possible, and (3) no available leased property meeting accessibility specifications was available in the area.

Revamping the ATBCB

While GSA was making new rules, the Congress shifted attention back to reauthorization of the *Rehabilitation Act,* including examination of the structure and mission of the Architectural and Transportation Barriers Compliance Board. During Senate hearings, concerns were expressed about the ATBCB and its ability to achieve its mission. One significant concern was the inappropriateness for a board composed only of agency representatives to be monitoring and overseeing their own agencies' implementation of the *Architectural Barriers Act.*[12]

The Congress, reacting to concerns about board membership, enacted changes in the ATBCB through the *Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978.* This law added 11 public members to the board (increasing its membership from 10 to 21), giving outsiders a majority and stipulating that five of the public members be handicapped. The 1978 law also authorized technical assistance and required the board to issue minimum guidelines to public bodies seeking to comply with the barrier removal act.

The Congress commissioned a follow-up GAO report in 1980.[13] This report focused directly on the role of the ATBCB in implementing policy, and found, among other things, that: (1) the board was hampered in fulfilling its mission by dependence on HHS for budget and resources; (2) barrier removal standards were insufficiently detailed and not uniformly applied in administrative agencies; and (3) primary authority for overseeing implementation of barrier removal policy was scattered across multiple agencies with no clear leadership. At the end of its study, GAO suggested that the Congress amend the barriers law to: (1) establish that the act is the principal authority to provide leadership and ensure compliance, (2) require the ATBCB, not GSA, to provide annual reports to Congress on waivers to standards, and (3) require other administrative agencies to confer with the ATBCB and obtain concurrence with accessibility guidelines.

The ATBCB and the Minimum Accessibility Guidelines

In August 1980, the ATBCB issued a draft version of new compliance regulations to clarify the accessibility mandate. Two important components were included: technical specifications and requirements as to the scope of mandated accommodation.[14] The technical specifications resembled but went beyond the ANSI standards by presenting design criteria in both word and diagram form. The scoping requirements stipulated the circumstances under which technical designs must be implemented and the extent to which the features must be included in facility design or modification.

The proposed scoping requirements made the minimum guidelines more stringent than those of ANSI and thus stimulated extensive controversy. There were few quibbles with stipulations about features to be included in new construction, but many questions were raised about scoping requirements in building additions and renovations. For example, the proposed regulations stated that if an addition was added to a building that did not include any new doors, one of the doors in the existing building still had to be made accessible according to the technical guidelines. The regulations also required that if a portion of a building was modified, all accessibility features in that area must be incorporated simultaneously.

Regulatory provisions concerning accessibility in leased space generated political controversy. The ATBCB regulations interpreted the 1976 amend-

ments to the barriers act to require that accessibility be assured at the time leases were entered into or renewed by the federal government, whether or not any structural alterations were otherwise planned. Where no accessible space was offered for lease, the government would be allowed to rent space only where certain conditions were met; at least one entrance and each "essential feature" would have to be made accessible according to technical standards described in the regulations. Sensing some confusion on this point, the ATBCB asked its general counsel and the Justice Department to evaluate its interpretation of coverage of leased facilities under the barriers law. Both judged the board's interpretation—that leased property should be made accessible at the time of lease creation or renewal—to be correct under the law as amended in 1976.[15]

Publication of final minimum accessibility guidelines was considered by the board at its meeting in January 1981. The final regulations closely mirrored the proposed ones, with a few minor modifications. Three federal agencies—the U.S. Postal Service, the Department of Housing and Urban Development (HUD), and GSA—opposed the minimum guidelines, arguing that they were too broad and required extensive modifications not mandated by the law. The postal service representative, describing the sentiments of the opposition, argued that "this is a classic case of pushing so far, so fast, on so skimpy a base, in so much disregard of legal and practical limits, that to support the rule would harm, rather than help, the interests we are called on to serve."[16] Objection was also made on the basis of compliance costs mandated by the regulations.

Following heated debate, the ATBCB voted to approve the minimum guidelines by a vote of 14 to 4, with the USPS, GSA, HUD and one public member voting against them. The final rule was issued in early 1981 with an immediate compliance date.[17] The postal service announced that it would not abide by the new ATBCB rules, but would follow its own less stringent regulations for achieving accessibility.[18]

Architectural Accessibility and Regulatory Relief

The new minimum guidelines were barely in place before they were challenged by the new Reagan administration as part of a broader initiative to reduce regulatory mandates on state and local governments and the private sector. The administration entered office with the promise that it would loosen federal regulations which, it argued, had become too extensive, too harmful to the economy, and too intrusive into state and local affairs. One of the regulatory targets set for scrutiny was the recently devised minimum accessibility guidelines.

In an unusual move in 1982, the ATBCB considered rescinding the minimum accessibility guidelines that it had approved the year before, based on the nearly unanimous position of agency representatives on the board. After considerable political debate, the board modified its existing minimum guidelines rather than rescinding them altogether. This was a compromise solution; guideline opponents were satisfied by the removal of the most controversial regulatory components, while handicapped advocates were marginally pleased that the guidelines were not abandoned altogether.

One of the revisions made to the minimum guidelines concerned the question of accessibility modifications in leased facilities. The proposed amendments deleted the regulations governing leased facilities, noting the controversy about the lease question and stating that "the issue concerning the applicability of the *Architectural Barriers Act* to leased buildings is a legal one on which the board expresses no position."[19]

Changes were made in other provisions in response to heavy pressure by the agency representatives. Rules governing building entrances and handicapped parking spaces were modified and made weaker than those in the existing guidelines. Efforts were also made to increase the compatibility of the ANSI standards and the technical specifications set forth in the board's minimum guidelines for accessibility. Following the publication of the ATBCB's minimum accessibility guidelines in 1982, the four standard-setting agencies developed and published jointly a set of regulations for implementing the provisions of the *Architectural Barriers Act*. The regulations, known as the Uniform Federal Accessibility Standards (UFAS), today serve as the technical guidelines that federal agencies must follow.[20] UFAS specifies in words and figures how accessibility features are to be designed and installed; the standards also stipulated under what circumstances accessibility features must be provided in federal buildings and facilities.

The issue of accessibility requirements in leased space has been resolved in recent years, partially as the result of a federal court decision in *Rose* v. *United States Postal Service*.[21] This case challenged the USPS interpretation that the law required accessibility changes in leased space only when alterations were otherwise being made and not when leases are renewed. While the plaintiffs lost in federal district court, they prevailed in the circuit court, which ruled that the USPS did have a responsibility to make its leased facilities accessible to persons with disabilities.

Responding to this decision, the USPS issued a notice of interim standards for accessibility in its facilities in 1986.[22] For its part, the ATBCB also began devising a new section on leased space to add to its minimum accessibility guidelines. The revision was issued as a proposed regulation in early 1987[23] and, with minor revisions, it was approved as a final rule by

Figure 3-1

Overview of the Architectural Barriers Act of 1973

General Purpose: To enhance the accessibility of federal government buildings and facilities to persons with disabilities by removing architectural barriers.

Legislative History:

1968: Congress passed the *Architectural Barriers Act* (45 U.S.C. 4151-4157). This act required that:

1. Three agencies—the General Services Administration and the Departments of Defense and Housing and Urban Development—issue standards that ensure accessibility for persons with disabilities in buildings and facilities under their purview.

2. The standard-setting agencies consult with the Department of Health and Human Services (originally the Department of Health, Education and Welfare), when designing accessibility standards.

3. Provisions of the act extend to all buildings and facilities constructed or altered on behalf of the United States; leased in whole or in part by the United States after August 12, 1968; or financed in whole or in part by the United States after August 12, 1968.

4. The heads of the standard-setting agencies may authorize waivers to accessibility standards when it can be shown that the waiver is clearly necessary.

1970: Congress amended the act so as to include buildings and facilities constructed through the *National Capital Transportation Act of 1960*, the *National Capital Transportation Act of 1965*, or title III of the Washington Metropolitan Area Transit Regulation Compact.

1973: Through section 502 of the *Rehabilitation Act of 1973*, Congress created the Architectural and Transportation Barriers Compliance Board to oversee implementation of the barriers act.

1976: Congress amended the law to include the U.S. Postal Service as the fourth standard-setting agency responsible for designing and implementing accessibility standards.

1978: Congress amended section 502 of the *Rehabilitation Act of 1973* so as to expand the ATBCB membership to include a majority of public members; ATBCB was instructed to issue regulations specifying minimum guidelines for standard-setting agencies to follow in designing accessibility standards.

Regulatory History:

Following the initial passage of the act, the General Services Administration issued administrative regulations on implementation of the act; other standard-setting agencies followed suit.

1980: Following congressional direction, the ATBCB issued a set of minimum accessibility standards for the standard-setting agencies to follow (46 *Federal Register* 4270).

1982: The ATBCB issued revised minimum accessibility guidelines which removed some requirements and provisions about leased space (47 *Federal Register* 33862).

1984: Four standard-setting agencies issue the Uniform Federal Accessibility Standards (49 *Federal Register* 31528), which outline the accessibility requirements that federal agencies must follow to comply with the provisions of the *Architectural Barriers Act.*

1988: The ATBCB issued proposed regulations that would update the minimum guidelines and extend coverage to space leased by the federal government.

the ATBCB at its meeting in the spring of 1988. After several years of struggle, the issue of what accessibility features are required in leased space was finally resolved.

THE REHABILITATION ACT OF 1973: SECTIONS 501 AND 504

Employment protections for persons with disabilities are rooted in provisions of the legislation that authorize the federal government's vocational rehabilitation program. Both section 504, the linchpin of nondiscrimination policy for handicapped Americans, and section 501, which requires federal agencies to take affirmative action in employing persons with disability, were born quietly, without fanfare, as relatively unnoticed provisions in a 1973 law designed to reauthorize and expand the *Rehabilitation Act.*

Section 501: Employment Mandate for the Federal Government

Section 501 mandates that agencies of the federal government take affirmative action to hire and advance in employment persons with disabilities. It also created an Interagency Committee on Employment of the Handicapped. Through a long series of executive orders, the federal government had, by the early 1970s, extended affirmative action measures for employment to racial minorities and women. The extension of affirmative action to handicapped citizens, therefore, was almost a natural progression of policy approaches to employment discrimination problems. The federal government, which took the lead in pressing for many civil rights measures, prided itself on being a "model" in eliminating discrimination and fostering equal opportunities for minority groups.

Responsibility for implementing section 501 was vested in the U.S. Civil Service Commission (now the Office of Personnel Management). In consultation with the newly created Interagency Committee on Employment of the Handicapped, in early 1974 the commission issued Federal Personnel Manual Letter 306-5,[24] with instructions specifying reporting requirements, outlining agencywide and field activity affirmative action plans, and requiring the collection of specific statistical data.[25]

During the early years of policy implementation, section 501 generated changes in the employment practices of federal agencies as they sought to comply with the Civil Service Commission regulations.[26] Assessing preliminary implementation experiences in its 1975 report to the Congress, the commission noted that: "Overall, we have observed a considerable increase in the interest and commitment to the program among agencies. One major accomplishment has been the development of an awareness by nonhandicapped persons toward the capabilities, employment problems, and needs of handicapped individuals."[27]

Implementation of section 501 across federal agencies was, however, uneven as the commission acknowledged in 1975 in reference to affirmative action plans: "We found a wide range of quality in the plans. Some agencies displayed a keen interest in developing and implementing strong programs with ideas and methods that went beyond the suggested model. Other agencies submitted plans that can be classified as barely meeting minimum requirements."[28] In the same 1975 report, the commission identified a problem long associated with implementation of section 501—insufficient resources.[29]

In 1977, the Civil Service Commission undertook formal rulemaking with regard to the discrimination complaint procedures available to handicapped persons through section 501.[30] The approach taken by the commission was to add handicap to the proce-

Figure 3-2
Key Decisions in Removal of Architectural Barriers

1968: Congress enacts the *Architectural Barriers Act,* which requires that new buildings constructed by the federal government or with federal funds be accessible to persons with disabilities. Also requires that accessible features be added when other modifications are made to existing buildings.

1969: The General Services Administration issues administrative regulations for implementing the barriers act.

1973: Congress, through section 502 of the *Rehabilitation Act of 1973,* creates the Architectural and Transportation Barriers Compliance Board (ATBCB) to coordinate and oversee implementation of the law.

1976: Congress amends the *Architectural Barriers Act of 1968* to include the U.S. Postal Service and property leased by the federal government.

1978: Congress amends section 502 of the *Rehabilitation Act* to include public members of the ATBCB and require the ATBCB to issue minimum guidelines.

1981: The ATBCB issues minimum accessibility guidelines for standard-setting agencies to follow in designing accessibility policies to implement the law.

1982: Following dispute about the applicability of the law to leased property, the ATBCB amends its minimum accessibility guidelines to omit provisions regarding leased property.

1984: The four standard-setting agencies—the General Services Administration, Department of Defense, Department of Housing and Urban Development, and the U.S. Postal Service—jointly issue Uniform Federal Accessibility Standards, following the guidelines promulgated by the ATBCB.

1988: Responding to federal court decisions regarding the applicability of the act to leased property, the ATBCB revises its minimum accessibility guidelines to include provisions covering leased space.

dures designed for discrimination complaints based on race, sex, color, and national origin. A few variations were required, however, because the 501 mandate required affirmative action, but it neither explicitly prohibited discriminatory practice nor provided specific remedies, as do other civil rights laws. One area of divergence between the complaint procedures for disabled persons and those for other persons experiencing discrimination concerned back pay. The commission judged that section 501's affirmative action mandate did not provide sufficient authority to require back pay as a remedy for discrimination.

Responding to public comments offered during the rulemaking process, the Commission added to the regulations a section defining the term "qualified handicapped person." With respect to employment, such persons (1) with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of themselves or other workers, (2) meet the experience and/or education requirements of the position, and (3) meet the criteria for appointment under one of the special appointing authorities for handicapped persons.[31]

In response to other comments, the Civil Service Commission added a section to the regulations requiring that federal agencies make reasonable accommodations in work settings and operations to employ handicapped workers unless it could be demonstrated that such accommodation caused an undue hardship for the program or operation.[32] Examples of accommodations included making facilities accessible, job restructuring, modified work schedules, and acquisition of new technology usable by handicapped persons. The hardship test for "unreasonableness" was not defined, but reference was made to size and type of operation and the nature and cost of accommodations.

The EEOC and Implementation

Responsibility for implementing section 501 did not long remain with the Civil Service Commission. In 1978, as one of several plans for reorganizing the executive branch, President Jimmy Carter proposed consolidating fair employment programs into the Equal Employment Opportunity Commission (EEOC).[33] The House Government Operations Committee examined and approved the reorganization plan, arguing that it would be "beneficial to those whose rights are being protected" and would "reduce the impact on the business community that has resulted from the proliferation of governmental units administering related programs."[34] The plan was approved by the Congress when the House of Representatives defeated a resolution of disapproval by a vote of 39-356.[35]

Only two significant changes have been made in the complaint procedure regulations for section 501. One revoked part of the 501 regulations (promulgated in 1978) that prohibited the use of back pay as a remedy for discrimination on the basis of handicap.[36] This revocation resulted from the 1978 amendments to the *Rehabilitation Act of 1973,* which made available to individuals complaining of handicapped discrimination the same remedies as provided to other protected classes through Title VII of the *Civil Rights Act of 1964.*[37]

The other regulatory change concerned a modification in 1981 to clarify the use of inquiries about disabilities as part of preemployment evaluation.[38] The revision recognized that gathering information on handicapped conditions may be important to implementing affirmative action in hiring, placing, and promoting persons with disabilities. The regulations, while allowing the collection of this information, required that it be kept confidential except for purposes directly related to affirmative action measures, safety of workers, and investigation of compliance.

Actions that agencies are expected to carry out in order to comply with the section 501 mandate are specified in management directives prepared and distributed by the EEOC. Directive EEO-MD-712 outlines requirements related to employment goals and objectives, special recruitment programs, facility accessibility, reasonable accommodation, merit promotion, and program management and administration (see Figure 3-3).[39] Other directives provide instruction on the preparation of multi-year employment programs and affirmative action plans.[40]

Section 504: Federal Mandates Placed on Recipients of Federal Financial Assistance

The origins of section 504 have been attributed to a small group of legislative supporters in the Congress, notably Representative Charles Vanik (D-OH) and Senator Hubert H. Humphrey (D-MN).[41] These two legislators introduced bills in Congress, in the early 1970s, to amend the *Civil Rights Act* to include persons with mental or physical disability within the protected classes. These bills, among the first to recognize the need for civil rights protections for persons with disabilities, stalled in committee.

Given an inability to amend the *Civil Rights Act,* a different strategy was taken in 1972: include a nondiscrimination clause within the rehabilitation act. Section 504 was not considered to be a major part of the legislation to reauthorize the vocational rehabilitation program; in fact, it was not included in the original draft of the bill. Instead, section 504 was added later as bill drafters sought to enhance the employment of individuals who successfully completed vocational rehabilitation programs. There was some concern among the bill drafters that people might complete vocational rehabilitation programs and

Figure 3-3
Key Provision of EEOC's Management Directive to Federal Agencies Regarding Implementation of Section 501

1. Emphasis on Targeted Disabilities: Agencies are instructed to emphasize employment of persons with targeted disabilities, that is, those persons who experience the most severe disabilities as defined by EEOC.

2. Quantitative Goals: Agencies with 500 employees or more are to establish quantitative goals for employment of persons with disabilities. Agencies with fewer than 500 employees must submit a statement of assurance that a policy of nondiscrimination and affirmative action will be observed.

3. Special Recruitment Programs: Agencies are required to establish special recruitment programs and track applications from persons with targeted disabilities.

4. Facility Accessibility: Agencies are required to take action to assure that there is no discrimination against handicapped applicants or employees because of architectural, communication, or transportation barriers. Agencies are instructed to survey facilities, identify barriers, and develop timetables and priorities for their removal.

5. Reasonable Accommodation: Agencies are required to establish and publicize specific procedures for prompt and efficient processing of requests for reasonable accommodation of the disabilities of handicapped applicants and employees.

6. Program Administration and Management: Agencies with 3,000 or more employees should have a full-time handicapped-program manager at headquarters and each field installation with more than 3,000 employees. Agencies are instructed to issue internal guidance to personnel regarding the comprehensive affirmative action program for handicapped persons. Agencies are also required to collect data on employment of persons with disabilities, establish systems to evaluate on-going programs, and conduct training programs to enhance the awareness of management and employees concerning disability issues and affirmative action policies.

Source: U.S. Equal Employment Opportunity Commission, *Comprehensive Affirmative Action Programs for Hiring, Placement & Advancement of Handicapped Individuals*, EEO-MD-712 (Washington, DC: EEOC, March 29, 1983).

then not be hired because of discrimination.[42] Section 504 is a very brief statement of nondiscrimination policy:

> No otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.[43]

The definition of handicapped individual, section 7(6), was the existing one in the vocational rehabilitation program that made reference to employment.

> The term "handicapped individual" means any individual who (A) has a physical or mental disability which for such individual constitutes or results in substantial handicap to employment and (B) can reasonably be expected to benefit from vocational rehabilitation service.[44]

This employment-limited definition was modified and expanded by amendment to the *Rehabilitation Act* in 1974, in which "handicapped individual" was redefined as a person who "has a handicap, has a record of a handicap, or is regarded as having a handicap."[45] This change broadened significantly the coverage of section 504 to include all Americans with disabilities.

Given the brevity of the statutory language, it was left to the drafters of 504 regulations—staffers in the Office of Civil Rights within the Department of Health, Education, and Welfare—to lay out the objectives and the means of implementing the antidiscrimination policy.[46] The regulations include several organizing principles that serve as the underpinnings of antidiscrimination policy for disabled citizens. These include program accessibility and reasonable accommodation. In addition, the regulations seek to clarify the key definitional questions of who is entitled to protection under the law and whose behavior is to be regulated. The regulations are introduced by the statement that "Section 504 thus represents the first federal civil rights law protecting the rights of handicapped persons and reflects a national commitment to end discrimination on the basis of handicap."[47]

Definitions of Handicapped Person: Who is Protected. The section 504 regulations, issued in 1977 and still in place, include the definition of handicapped person as outlined in the *Rehabilitation Act Amendments of 1974*, stipulating protections for those who have a mental or physical handicap that limits one or more major life activities, have a record of such a handicap, or are perceived as having such a handicap. "Major life activities" are defined as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work-

ing. Disability, then, means impediments to communication, mobility, learning, and earning a living.

These regulatory provisions do not answer all definitional questions, however. Throughout the rulemaking efforts, the Office of Civil Rights (OCR) staff debated whether various groups are entitled to protection under section 504; these groups included alcoholics and drug addicts, homosexuals, and elderly persons. It was decided not to include individuals simply on the basis of sexual preference or age. Neither factor, in and of itself, was considered to constitute a mental or physical disability. Drug abuse and alcoholism proved to be far stickier issues. Most health professionals characterize these conditions as mental and/or physical disorders, and, thus, eligible for protection under section 504.

Wrestling with this issue, HEW requested the U.S. Attorney General's office to prepare a legal opinion on whether alcoholics and drug abusers were appropriately considered as handicapped for the purposes of section 504. The opinion was in the affirmative, although many people inside and outside of the administration were not comfortable with this position. HEW, in issuing final section 504 regulations, made direct reference to concerns about protections for drug users and alcoholics and to the Attorney General's opinion. The regulations state that given the opinion, the secretary "therefore believes that he is without authority to exclude these conditions from the definitions."[48] To quell concerns, expressed strongly in public comments, the regulations state that protections are afforded only to those drug users and alcoholics who are otherwise fit and qualified for the job in question.

Costs, Affirmative Actions, and Compensation. In designing section 504 regulations, OCR staff had to come to grips with important issues related to compliance costs and remedial actions. It was decided that implementation must be affirmative in pressing for the rights and opportunities of persons with disabilities.[49] Unlike other types of civil rights situations, a "cease and desist" requirement would not be enough. For example, telling an employer to stop discriminating, without simultaneously requiring some form of accommodation, would mean that implementation would have little, if any, real impact.

The cost of compliance was the second issue addressed in formulating approaches to implementation of section 504. Members of the OCR staff were less concerned about cost issues than other administrators might have been. They regarded disability rights as fundamental and not subject to qualification on the basis of costs or related grounds. They did recognize, however, that crafting the required accommodations would entail expenditures and be politically sensitive. In the first draft of the rules, the concept of "competing equities" was introduced as a means of signalling the need for a balance between needed remedies for disabled persons and the mandated costs of accommodation to be borne by regulated parties. In order to implement this balanced equities approach, the second draft of the regulations stipulated "that cost or difficulty are appropriate considerations, not in determining what constitutes discrimination, but in fashioning a remedy if a recipient has been found to be discriminating."[50]

Section 504 and Employment. The section 504 regulations include a section dealing directly with employment, stipulating that, "No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies."[51] The definition of handicapped person for this section is "an individual who, with reasonable accommodation, can perform the essential functions of the job in question."[52]

Description of the types of employment accommodations required under section 504, and which ones are "reasonable," entails specification of the types of compensatory action to be taken. Examples of appropriate accommodations include making employee facilities readily accessible to handicapped workers, job restructuring, modifications in work schedules, changes in equipment, and provision of readers for the blind. Accommodations in the context of employment are required by the regulations only so long as they do not impose an "undue economic hardship." This hardship provision harks back to the competing equities position by providing some limit on the extent of required employment accommodations. The guidance furnished in the rules for ascertaining undue hardship, however, is quite vague, stating only that hardship should be determined with reference to the overall size of the recipient's program (i.e., with respect to number of employees, number and type of facilities, size of budget), type of operation, and nature and cost of needed accommodation.[53]

Section 504 and Accessibility. The 504 regulations as devised by HEW also contain a section on the accessibility of handicapped persons to public buildings and facilities. The regulation drafters, recognizing that facility access would be controversial given the costs associated with building restructuring, adopted a second balancing concept: *program accessibility.* Rather than stipulate that all buildings be accessible in all dimensions, the regulations state that recipients of federal funds must operate a program such that "when viewed in its entirety, it is readily accessible to and usable by handicapped persons."[54] Program accessibility does not require recipients to make each of its existing facilities accessible to disabled persons. Structural modifications are not re-

quired if other sorts of accommodation steps can be taken; examples include rescheduling of classes or service delivery to accessible locations, redesign of equipment, and home visits by health care workers. In choosing alternative strategies, however, recipients are required to give priority to methods that offer programs and services to handicapped persons in the most integrated setting possible. This provision reflects the persistent demand by disabled persons that mainstreaming—integrating handicapped and nondisabled persons—be pursued to the fullest extent possible.

The 504 accessibility regulations are more stringent for new buildings financed with federal funds; these buildings must be designed and constructed so as to be "readily accessible to and usable by handicapped persons."[55] It is also stipulated that alterations made to existing facilities should include modifications to enhance accessibility by disabled individuals. The standards of the American National Standards Institute (ANSI) are specified as guidelines for achieving accessibility in construction.

The program accessibility criteria for existing buildings represent a compromise. The criteria opened opportunities for handicapped individuals and required changes by recipients of federal funds, but fell short of requiring complete accessibility. The regulations stipulated a time period for compliance. Program accessibility was required 60 within days of the effective date of the regulations (June 3, 1977), except where structural changes were needed, in which case a three-year compliance period was mandated.

INITIAL STATE AND LOCAL GOVERNMENT REACTION TO 504 REGULATIONS

Given the focus of this report on issues of intergovernmental relations in implementation of federal regulatory mandates, it is useful to examine the initial reactions of state and local governments to the activities mandated through section 504. There is little evidence that state and local governments were consulted regularly during the rulemaking process, despite their key role in implementing the nondiscrimination mandate. These governments, as well as other parties to be affected by the regulations, did come to recognize the potent impact of the nondiscrimination regulations being prepared by HEW, and submitted their views formally during the rulemaking process.

Two drafts of HEW's 504 rules were published in 1976,[56] and public comment was invited on each. Practically all of those who submitted comments concurred with the general mission of section 504, to remove discrimination against persons with disabilities and to eliminate physical barriers that impede their access to public facilities. At the same time, many

Figure 3-4
Section 504: Statute and Regulations

Statute: Section 504, *Rehabilitation Act of 1973* (PL 93-112)

Basic Purpose: Statement of federal government policy that no recipient of federal financial assistance shall discriminate on the basis of handicap.

Statutory Wording: "No otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Definition of Handicapped Person: As defined in the *Rehabilitation Act of 1973*, a handicapped person was one who (1) had a physical or mental impairment which constitutes or results in substantial handicap to employment and (2) can reasonably be expected to benefit from vocational rehabilitation service.

This employment based definition was changed, through 1974 amendments to the *Rehabilitation Act*, so that a handicapped person is one who has a mental or physical handicap, has a record of such a handicap, or is regarded as having such a handicap.

Statutory Revision: The wording of section 504 was amended in 1978 to include the federal government as well as recipients of federal financial assistance under the nondiscrimination mandate.

Regulatory Provisions: Under the administrative regulations promulgated by the Department of Health, Education and Welfare in 1977, the following provisions were made:

Program Accessibility: The regulations require that those covered by section 504 take action so that essential programs and services are accessible to persons with disabilities. Program accessibility does not require removal of all barriers; other measures to enhance accessibility—relocating service locations or serving individuals in their home, for example—satisfy the program accessibility mandate.

Reasonable Accommodation: The regulations prohibit employers covered by section 504 from discriminating on the basis of handicap. They also require that employers make accommodations in the work place to facilitate employment of persons with disabilities. Such accommodations, however, must be made only so long as they do not represent "undue hardship" on the employer.

types of concerns were voiced about the administrative mechanisms being prescribed by the regulations. The state and local government reactions provide insights into potential impediments to implementation and the tensions being generated within the intergovernmental system.

One issue of concern to state and local governments was that of including drug users and alcoholics within the group of persons protected by section 504. For example, the Acting General Manager of the City of Los Angeles argued against extending protections to persons suffering drug addiction or alcoholism. He argued that these are "conditions that their victims have the ability to cure" and that it is "highly inappropriate to require public employers to employ addicts using taxpayers' funds when the incidence of absenteeism among such individuals is known to be high."[57] More colorfully, a representative of a local school system in New Mexico stated that: "If our school is forced to admit to classes or provide a special teacher for a known dope addict, the superintendent and board members will be ridden from town on a rail."[58]

Reasonable accommodation in employment was another regulatory provision that concerned state and local governments. In this regard, the Administrative Officer of the City of York, Pennsylvania, in comments submitted to HEW, argued:

> When I read such proposals it becomes apparent that oftentimes federal agencies presuppose that employers, whether they be private or public, have unlimited funds, unlimited power to institute sweeping personnel changes free of union interference, are unconcerned about productivity, and value the rights of the target group in question, whichever it is, above the rights of other employees, other applicants, consumers, etc.[59]

It is clear from the above comments that some parties misunderstood that reasonable accommodation was required only for "otherwise qualified" job candidates. The official from York, Pennsylvania, complained that when an employer is forced to "make all necessary accommodations to allow a handicapped person to perform in a lower capacity than other similarly classified employees, and pay the handicapped person the same wages as the more productive employee, entire classification systems can be disrupted."[60]

Regulatory mandates for accessibility and barrier removal also generated extensive and heated reactions from state and local government representatives. Almost all of the concerns expressed about accessibility requirements centered on the large costs anticipated in complying with the regulations. Local school systems and institutions of higher education especially protested the mandate for architectural accessibility. Thus, the Secretary of the Wisconsin Department of Administration argued that HEW's "proposed directives for eliminating all physical obstacles to handicap accessibility in existing facilities would create excessive costs for the state—particularly in the modification of university and elementary and secondary school structures."[61] A representative of the New York State School Boards Association made the same point: "The proposed regulations impose very costly burdens on local school districts in a very short time."[62] The governor of South Dakota made a somewhat different point, arguing that states with small populations and many school districts be given greater flexibility in responding to the accessibility mandate.[63]

A review of comments submitted to HEW indicates that concern about compliance costs was practically universal among the state and local government representatives. It was not only greater mandated costs that disturbed these individuals but also the fact that the federal government was imposing a new and powerful mandate without providing any funding. One expression of this sentiment was provided to HEW by a representative of George Fox College:

> When will the [federal] government learn that to expand services/dollars to include a newly protected group *without increasing the available pool of dollar resources* is really nothing more than taking from one group in order to provide for another? The idea that colleges and universities can always spend a "little bit more" to add an additional protected class when in fact the pool of available resources is not increased one penny, should be labeled a fiction and destroyed, once and for all.[64]

It was clear to all parties who would be regulated by HEW's 504 rules that significant compliance costs would accompany the nondiscrimination mandate. What was unfair, from their viewpoint, was the failure of the federal government to provide substantial resources to subsidize compliance costs.

The review of these early reactions to the 504 mandate indicates the strong and often negative reactions that the provision generated among local officials. Clearly, many of these reactions have been tempered over time, as state and local governments have pursued implementation and often found compliance to be less painful and disruptive than they initially feared. At the same time, some of the issues raised in these early reactions have been associated consistently with tensions in the intergovernmental system regarding implementation of the 504 mandate.

The 504 Coordination Regulations. After issuing its own section 504 regulations in April 1977, HEW turned to its next task: developing regulations for other federal agencies to follow in creating their own 504 implementation guidelines.[65] The coordinating regulations echoed HEW's own regulations, calling for reasonable accommodation in employment, program accessibility in existing buildings, and ready and usable accessibility in newly constructed facilities.[66] The coordinating guidelines were issued by HEW in final form in early 1978. It would be several years, however, before all agencies of the federal government developed and formally promulgated their own 504 regulations.

Section 504 and Federal Agencies. The original language of section 504 prohibited recipients of federal financial assistance from discriminating on the basis of handicap; the language did not, however, directly mention any applicability of section 504 to the federal government. As the 504 regulations were drafted, questions emerged as to whether the federal government itself was covered by the nondiscrimination mandate. To answer this question, the Department of Health, Education, and Welfare asked the Justice Department to assess the applicability of section 504 to federal agencies. The Department of Justice argued that, according to the statute, section 504 pertained only to recipients of federal funds and not to federal agencies.

While the failure to include federal agencies under the mandate covering nondiscrimination on the basis of handicap was basically an oversight, the federal government was assailed from many quarters for what was seen as a hypocritical stance. The Congress responded to these concerns about a double standard in 1978 by amending the wording of section 504 to include the federal government.[67] In floor debate over this issue, Representative James Jeffords (R-VT) defended this expansion of 504 coverage to the federal government as "fair and appropriate and [it] should go a long way toward developing a uniform and equitable national policy for eliminating discrimination."[68] It is interesting to note that the Congress did not include itself directly under the 504 mandate.

Inclusion of federal agencies under the 504 mandate required the creation of another set of regulations. These regulations, known as the "federally conducted" regulations, specify how section 504 is to be implemented in the programs that each executive agency itself conducts. Thus, every federal agency is now required to have two sets of 504 regulations, one for the programs it conducts itself (i.e., with its own personnel) and another for those conducted by recipients of federal funds expended by the agency. The Justice Department was the coordinating agency.[69]

In April 1983, the Department of Justice distributed to federal agencies a prototype of regulations in the federally conducted programs. The department issued its own 504 regulations in September 1984 after a period of public comment.[70] What is interesting in these regulations is their difference from those for recipients of federal funds; despite their common statutory base, DOJ's federally conducted rules were less stringent in certain regards than those applied to recipients of federal financial assistance.

One significant difference concerned employment protections for persons with disabilities. The recipient regulations, as described above, require that reasonable accommodation be taken to employ and promote handicapped workers. The federally conducted regulations refer to the requirements and procedures of section 501 of the *Rehabilitation Act of 1973*, but do not mention reasonable accommodation. Another key difference in 504 regulations involved program accessibility, which is required for all

Figure 3-5
Key Decisions Regarding Employment Protections for Persons with Disabilities in the Federal Government Work Force

1973: The *Rehabilitation Act of 1973* includes section 501 (requiring that agencies of the federal government undertake affirmative action to employ persons with disabilities).

1974: The U.S. Civil Service Commission adds section to the *Federal Personnel Manual* to guide implementation of section 501.

1978: The U.S. Civil Service Commission issues administrative regulations concerning implementation of section 501.

1978: President Carter, through Executive Order, shifts responsibility for implementation of section 501 to the Equal Opportunity Employment Commission.

1978: Congress attaches section 505 to the *Rehabilitation Act*, granting persons with disabilities that same remedies for discrimination as those available to other minorities through Title VII of the *Civil Rights Act of 1964.*

1978: The Equal Employment Opportunity Commission amends the section 501 regulations to reflect provisions of section 505.

1978: The Equal Employment Opportunity Commission makes minor revisions in the section 501 regulations with regard to inquiries related to pre-employment evaluations.

recipients of federal funds, but for federal agencies only if actions to achieve accessibility do not represent a "fundamental alteration" in the program or an undue financial burden to the agency.

It is rather remarkable, then, that the federal government is placing a somewhat more stringent set of regulatory requirements on recipients of federal funds—including state and local governments—than it places on itself. This discrepancy was widely noted during the regulation drafting process, and many public comments submitted to DOJ argued for the federally conducted regulations to mirror those for recipients of federal funds. The Department of Justice, in its final rules, defended the differences between the versions of 504 regulations on the basis of recent judicial decisions which, the agency argued, had constricted the breadth of the statutory mandate for nondiscrimination on the basis of handicap.[71] Thus, after reviewing these decisions, the regulations state: "The Department believes that judicial interpretation of section 504 compels it to incorporate the new language in the federally conducted regulation."[72]

The promulgation of agency regulations relevant to nondiscrimination on the basis of handicap in agency-conducted programs has not been rapid. While the statutory requirement to issue such regulations dates back to 1978, by the end of 1987 only a little more than half of all federal agencies had issued final section 504 regulations for their own programs.[73]

THE LEGACY OF POLICY DEVELOPMENT

Policies to advance the rights of persons with disabilities have proceeded through several stages since their advent in the late 1960s and early 1970s. During the first stage of legislative consideration and enactment, policy development was championed by a few legislators who fought for laws to protect disabled persons. These laws were, for the most part, strong on symbolic language but relatively weak in terms of principles or directions to guide policy implementation. For this reason, the second stage of policy development created administrative regulations with important criteria to guide implementation.

It was during the regulation drafting stage that political controversy began to emerge as handicapped groups recognized the potential impact of disability rights policies, and those to be regulated recognized the potential costs of the accommodations involved. After substantial rulemaking efforts, regulations to guide implementation of barrier removal, employment protections, and nondiscrimination on the basis of handicap were put into place by the late 1970s.

As they have developed, the disability rights mandates are extensive, complex, and sometimes confusing. The federal government, for example, faces mandates to employ persons with disabilities as the result of both sections 501 and 504 of the rehabilitation act. The former provision requires affirmative action in employing persons with disabilities, the latter, that reasonable accommodation be made. Similarly, mandates to remove architectural barriers and enhance the access of disabled persons to public buildings and facilities derive both from the *Architectural Barriers Act* and the program accessibility requirement of the 504 regulations. To make things more complex, the 504 regulatory requirements for recipients of federal financial assistance are different in some respects from those for federally conducted programs.

For state and local governments, the disability rights mandates deriving from section 504—that sim-

Figure 3-6
Key Decisions Regarding Employment Protections for Persons with Disabilities Relevant to Recipients of Federal Financial Assistance

1973: Congress enacts section 504, which prohibits recipients of federal financial assistance from discriminating on the basis of handicap.

1978: The Department of Health, Education, and Welfare issues "Coordination Regulations" for each federal agency to follow in designing section 504 regulations for recipients who receive funds through that agency. Included here is the requirement for reasonable accommodation in employment.

1978-Mid-1980s: Federal agencies undertake rulemaking to design agency-specific regulations for implementing section 504, following guidelines promulgated by the Department of Health, Education, and Welfare.

1978: Congress amends section 504 of the *Rehabilitation Act of 1973* to extend coverage to all activities conducted by federal agencies.

1984: The Department of Justice issues the "federally conducted" guidelines for each federal agency to follow in designing 504 regulations relevant to activities conducted by the agency.

1984-88: Federal agencies engage in rulemaking to design section 504 regulations governing activities conducted by the agencies, following guidelines promulgated by the Department of Justice.

ple paragraph inserted quietly into the *Rehabilitation Act of 1973*—have a strong continuing impact on the conduct of state and local affairs. Most relevant to this study are requirements for *reasonable accommodation* of persons with disabilities in employment and *program accessibility.* While the general goal of disability rights has been embraced by most state and local governments, concerns remain about the interference of the federal government in state and local affairs and the attendant costs of complying with the mandates.

Today, after many years of protracted political struggles over the direction of disability rights policy, things are generally quiet on the policy development scene. Regulations are in place, some in their original form, others with some modification. Attention is shifting to implementation and compliance. It is to the important issue of the extent of federal and state compliance with disability rights policies that we turn in subsequent chapters.

NOTES

[1]The origins of federal efforts to remove architectural barriers are described in *Architectural Barriers in Federal Buildings: Implementation of the Architectural Barriers Act of 1968*, U.S. Senate, Committee on Environment and Public Works, Serial No. 96-8, 96th Congress, lst Session, November, 1979.

[2]U.S. Department of Health, Education, and Welfare, *Design for All Americans. A Report of the National Commission on Architectural Barriers to the Rehabilitation of the Handicapped* (Washington, DC: HEW, 1967) p. 2.

[3]Ibid., 2.

[4]"Statement by the President upon Signing the Bill for the Elimination of Architectural Barriers to the Handicapped in Public Buildings." *Public Papers of the President. Lyndon Johnson 1968-69* (Washington, DC: U.S. Government Printing Office, 1968), 88.

[5]34 *Federal Register* 12828-12829.

[6]Public Law 93-516, *The Rehabilitation Act Amendments of 1974*, enacted December 7, 1974, 93rd Congress, 2nd Session.

[7]U.S. House of Representatives, Committee on Public Works and Transportation, Subcommittee on Investigations and Review, *Hearings on the Effectiveness of the Architectural Barriers Act of 1968 (Public Law 90-480).* 94th Congress, lst Session.

[8]U.S. General Accounting Office, *Further Action Needed to Make All Public Buildings Accessible to the Physically Handicapped.* FPCD-75-166, July 15 (Washington, DC: U.S. General Accounting Office, 1975).

[9]*Hearings on the Effectiveness of the Architectural Barriers Act of 1968*, 2.

[10]42 *Federal Register* 9038-9039; 42 *Federal Register* 49485-49486.

[11]Under the 1969 GSA regulations, accommodations were required in property only if the property was constructed or altered in accordance with plans and specifications of the federal government. Accommodations were thus not required for leased facilities not constructed under government supervision. The 1978 GSA rules corrected this omission, requiring accommodations for all property leased by the federal government after January 1, 1978.

[12]U.S. Senate, Committee on Human Resources, Subcommittee on the Handicapped, *Hearings on Rehabilitation Extension Amendments of 1977.* 95th Congress, lst Session, 1977.

[13]U.S. General Accounting Office, *Making Public Buildings Accessible to the Handicapped: More Can Be Done* (Washington, DC: U.S. General Accounting Office, 1980).

[14]45 *Federal Register* 55010-55064.

[15]The legal opinion of the ATBCB's General Counsel is contained in a memorandum distributed to the board and dated October 23, 1980. The memorandum is included in U.S. House of Representatives, Committee on Education and Labor, Subcommittee on Select Education. *Oversight Hearings on the Architectural and Transportation Barriers Compliance Board*, 97th Congress, lst Session, 1981.

[16]Approved Minutes of the Architectural and Transportation Barriers Compliance Board Meeting, January 6, 1981, p. 29. These minutes are on file at the ATBCB office, Washington, DC

[17]46 *Federal Register* 4270-4304.

[18]In its own accessibility rules, the U.S. Postal Service (1979) stated that accessibility changes in leased property were required only when new leases were negotiated or existing ones were renegotiated with new terms. The rules exempted accessibility changes for extensions of existing leases. These rules were obviously less stringent than those proposed and adopted by the ATBCB.

[19]47 *Federal Register* 3951.

[20]General Services Administration, Department of Defense, Department of Housing and Urban Development, and U.S. Postal Service, Uniform Federal Accessibility Standards, 49 *Federal Register* 31528.

[21]774 F.2d 1355 (1984).

[22]51 *Federal Register* 13122-13123.

[23]52 *Federal Register* 4352-4356.

[24]These instructions were included as Federal Personnel Manual (FPM) 306-5, issued by the U.S. Civil Service Commission in late January 1974.

[25]U.S. Civil Service Commission, *Employment of Handicapped Individuals in the Federal Government. Report Prepared for the Senate Committee on Labor and Public Welfare and House Committee on Education and Labor* (Washington, DC: U.S. Civil Service Commission, 1974), 4.

[26]U.S. Civil Service Commission instructions for implementing section 501 were updated in FPM 306-7 (February 1975) and FPM 306-8 (April 1975). The latter instructions were issued in response to passage of the *Vietnam Era Veterans' Readjustment Act of 1974.*

[27]U.S. Civil Service Commission, *Employment of Handicapped Individuals in the Federal Government. Report Prepared for the Senate Committee on Labor and Public Welfare and House Committee on Education and Labor* (Washington, DC: U.S. Civil Service Commission, 1975, p. 13).

[28]Ibid., 27.

[29]Ibid.

[30]42 *Federal Register* 46541-46544.

[31]43 *Federal Register* 12293-12296.

[32]Ibid. This section parallels the reasonable accommodation provision outlined in the coordination regulations for section 504. These regulations are described in more detail below.

[33]The authority to undertake reorganization, subject to congressional approval, was contained in Public Law 95-17,

which renewed the power of the President to reorganize the executive branch for three years. Included in Reorganization Plan No. 1 of 1978 (43 *Federal Register* 19807) was the shift of responsibility for implementation of section 501 from the U.S. Civil Service Commission to the Equal Employment Opportunity Commission. In outlining this reorganization plan, President Carter noted the fragmented nature of equal employment programs and argued that "fair employment is too vital for handicapped enforcement."

[34]U.S. House of Representatives, Committee on Government Operations, *Reorganization Plan No. 1 of 1978*. House Report 95-1069. 95th Congress, 2nd Session, 12, 1978.

[35]The resolution of disapproval for the reorganization plan for the EEOC was contained in House Resolution 1049. The official transfer of responsibility for section 501 from the U.S. Civil Service Commission to the EEOC was made through Executive Order 12106, issued December 28, 1978 (44 *Federal Register* 1053). The EEOC redesignated the Civil Service Commission regulations for section 501, with a few technical revisions (43 *Federal Register* 60900-60901). This action moved the section 501 regulations from 5 *Code of Federal Regulations* 713 to 29 *Code of Federal Regulations* 1613.

[36]45 *Federal Register* 51383-51834.

[37]The provision granting the remedies of Title VII of the *Civil Rights Act of 1964* to persons facing discrimination on the basis of handicap was included as new Section 505 of the *Rehabilitation Act* (as amended in 1978).

[38]46 *Federal Register* 11218. Current regulations are found at 29 *Code of Federal Regulations* 1613.701-709.

[39]U.S. Equal Employment Opportunity Commission, *Comprehensive Affirmative Action Programs for Hiring, Placement and Advancement of Handicapped Individuals* (Washington, DC: EEOC, 1983, EEO-MD-712).

[40]U.S. Equal Employment Opportunity Commission, *Instructions for the Development and Submission of Federal Affirmative Employment Multi-Year Program Plans, Annual Accomplishment Reports, and Annual Plan Updates for FY 1988 through FY 1992*, EEO-Management Directive-714 (Washington, DC: EEOC, 1987) and *Affirmative Action for Hiring, Placement, and Advancement of Individuals with Handicaps*, EEO-MD-713 (Washington, DC: EEOC, 1987).

[41]Robert A. Katzmann, *Institutional Disability: The Saga of Transportation Policy for the Disabled* (Washington, DC: The Brookings Institution, 1986), pp. 45-47.

[42]Richard Scotch, *From Good Will to Civil Rights: Transforming Federal Disability Policy* (Philadelphia: Temple University Press, 1984).

[43]Section 504, *Rehabilitation Act of 1973*, PL 93-112.

[44]Section 7(6), *Rehabilitation Act of 1973*, PL 93-112.

[45]Section 111(a), *Rehabilitation Act of 1974*.

[46]42 *Federal Register* 22676-22702.

[47]Ibid., 22676.

[48]Ibid.

[49]Such steps to remove obstacles to participation should not, however, be considered affirmative action, which concerns extra measures to overcome pervasive discrimination in the past. Affirmative action goes beyond removal of architectural barriers and would include such activities as outreach and recruiting efforts to increase the number of disabled persons in the work force.

[50]41 *Federal Register* 29550.

[51]42 *Federal Register* 22680.

[52]Ibid., 22678.

[53]More information on performing reasonable accommodation may be found in these two publications: U.S. Office of Personnel Management, *Handbook of Job Analysis for Reasonable Accommodation*, PMS-720-B (April 1982) and *Handbook on Reasonable Accommodation*, PMS-720-A (March 1980).

[54]Ibid., 22681.

[55]Ibid.

[56]See 41 *Federal Register* 29296-29311 and 41 *Federal Register* 29548-29567.

[57]Comments included in the rulemaking docket compiled by HEW as part of the process of developing regulations for implementation of section 504 of the Rehabilitation Act of 1973. This docket is currently on file with the U.S. Department of Education at its office in Washington, DC. The comment is taken from docket submission 567a.

[58]Comment submission 83a, section 504 rulemaking docket. See note 68.

[59]Comment submission 64a, section 504 rulemaking docket. See note 68.

[60]Ibid.

[61]Comment submission 563a, section 504 rulemaking docket. See note 68.

[62]Comment submission 231a, section 504 rulemaking docket. See Note 68.

[63]Comment submission 664a, section 504 rulemaking docket. See note 68.

[64]Comment submission 135a, section 504 rulemaking docket. See Note 68.

[65]41 *Federal Register* 17871.

[66]43 *Federal Register* 2132-2139.

[67]This change, the only revision to date in the language of section 504, was included in the *Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978*, Public Law 95-602.

[68]124 *Congressional Record* (May 16, 1978), 13901.

[69]The U.S. Department of Justice was charged with central coordination responsibility for implementing section 504 through Executive Order 12250 (45 *Federal Register* 72995), which transferred implementation authority for section 504 from HEW to the Department of Justice.

[70]The draft regulations were issued at 48 *Federal Register* 55996 and the final regulations at 49 *Federal Register* 35724.

[71]The two primary cases cited in the DOJ regulations as justification for differences between the 504 regulations for recipients of federal funds and those for federally conducted programs were *Southeastern Community College* v. *Davis* (99 S. ct. 2361 (1979) and the *American Public Transit Association* v. *Lewis* (655 F.2d 1272 (DC Cir. 1981).

[72]49 *Federal Register* 35725.

[73]The tabulation of agency status in issuing regulations for section 504 in agency-conducted programs is presented in a Memorandum by William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, sent to Heads of Executive Agencies, dated February 4, 1988.

4

State Laws Providing Employment Protections and Architectural Barrier Removal for Disabled Persons

As in many areas of public policy, significant variation exists across the 50 states and the District of Columbia in the content and reach of laws regarding removal of architectural barriers and specification of employment protections for persons with physical and mental disabilities. In examining these laws and comparing them with federal law, it will become clear that state laws sometimes are more expansive than their federal counterparts in specifying disability rights. In other ways, federal laws provide greater protections. The analysis begins with an examination of employment rights for people with disabilities and then turns to state statutory provisions regarding accessibility in public and private buildings.

AN OVERVIEW OF STATE DISABILITY LAWS AND POLICIES

In some instances, state involvement in disability policies predates that of the federal government. The earliest of these state laws generally involved the care and treatment of certain classes of physically handicapped persons, most notably the blind and deaf. By the turn of the century, several states had enacted laws that created schools or other institutions to care for and educate blind and deaf children. It also was common for states to have laws concerning the treatment and institutionalization of persons with mental illness or retardation, although many of these laws would not be seen as humane by contemporary standards.

States also took the lead in developing workers' compensation programs. Prior to such programs, workers who were injured on the job struggled to collect damages and compensation from employers by suing them in court.[1] The underlying premise of these state policies is that workers should have access to compensation for injuries incurred on the job based on their seriousness and duration. Decisions about the award of compensation would be removed from the courts and determined by a state-regulated workers' compensation program. These programs were initiated in 1911 in Wisconsin and New Jersey; by 1948, all states had enacted some form of workers' compensation program.[2]

State laws to protect the rights of persons with disabilities, in contrast to workers' compensation programs and services for handicapped individuals, have much newer origins. Most state laws dealing with the removal of architectural barriers date from the 1960s. Many states followed the lead of the federal government, enacting barrier removal laws after passage of the *Architectural Barriers Act*.

The earliest state laws concerning employment protections for persons with disabilities were included within "White Cane Laws." Such laws, generally following a prototypical model, provide blind individuals the sole right to the use of white canes as a

signal of their disability. The white cane laws of some states also prohibit discrimination in employment, housing, and transportation on the basis of blindness or physical disability.

With the exception of white cane laws, the pattern for employment protection policies is much the same as that for architectural accessibility. Employment protection policies tend to be relatively new; often they were adopted soon after the creation of other civil rights laws in the state. As described below, substantial variation remains in terms of the persons included under employment protection policies and the employers subject to regulation.

STATE LAWS PROVIDING EMPLOYMENT PROTECTIONS FOR PERSONS WITH DISABILITIES

Given that employment provides people not only with remuneration but also with economic independence and social interactions, it is not surprising that employment protections are among the rights most sought by persons with mental and physical handicaps. State governments have responded in several ways to the recognition that persons with disabilities have long experienced employment discrimination.[3] Appendix A provides a detailed listing of state statutes that provide employment protections for disabled persons; included in this appendix is a description of the types of disabilities and forms of employment covered by the laws.[4]

Persons Granted Employment Protection

One important component of employment protection laws is the specification of types of disabilities that entitle individuals to protection. As the data in Table 4-1 indicate, 12 states provide employment protection only to persons who experience some form of physical disability, while the remaining 38 states and the District of Columbia include persons with either mental or physical disabilities.[5] In the last decade, 16 states have added mental disabilities to the conditions covered by employment protections,[6] demonstrating growing coverage of persons with mental disabilities under state fair employment and antidiscrimination laws.

The data in Table 4-1 show variation across regions in terms of state coverage of mental disability under employment protection statutes. States in the New England, Mideast, Midwest, and Plains regions are more likely than states in other regions to extend protections to mental disability.

It is important to recognize that definitions and coverage of persons with "mental disability" vary within state laws.[7] Some states restrict protection to those who are mentally retarded.[8] Others use the term "mental disability" in statutory language, but provide no definition, thus leaving the extent of coverage unclear. Still another approach is to define mental disability clearly to include both retardation and mental illness as protected conditions; 17 states had taken this approach as of 1986.[9]

State law definition of disabilities receiving employment protections is, as a rule, more restrictive or ambiguous than federal law. Under the administrative regulations promulgated for section 504 of the *Rehabilitation Act of 1973*, handicapped persons are defined as those who experience a mental or physical impairment that limits one or more of life's major functions, have a record of such impairment, or are regarded as having such impairment. This broad definition would provide protection, therefore, for a person who had a mental illness, had a record of such illness, or was, for some reason, regarded as having mental illness even if it did not exist (i.e., a person with dyslexia who was, as the result of this condition, considered to be mentally ill or retarded). As of 1987, only 11 states had language similar to the federal law to define handicapped persons.[10]

Some state laws specifically exclude certain types of mental illness from employment protections. Three states—Arizona, Georgia, Vermont—have provisions that limit or exclude individuals whose mental disability is related to the use of alcohol or illegal drugs. Other states cover only those disabilities that are expected to be of long duration or to last a lifetime. About ten states extend employment protections to persons whose disabilities do not interfere with their performance of essential job features.[11] Unlike federal law, which requires recipients of federal financial assistance to engage in reasonable accommodation to employ persons with disabilities, only slightly more than half of the states, through statute or administrative regulations, provide for reasonable accommodation.[12]

Types of Employment Covered by State Law

State laws generally take one of three approaches in providing employment protections for people with disabilities. The weakest statutes do no more than articulate that it is a policy of the state to employ persons with visual, hearing, or other physical impairments in state agencies, state political subdivisions, public schools, and other employment supported by the state. These policy statements—covering only *public employment and physical disability*—are often included in state statutes where other provisions related to blind persons are listed, including the stipulation that only blind persons are entitled to carry and use white canes. Given this position, the statements of affirmative employment policy are often referred to as "white cane" policies. This approach, which provides much less protection than more forceful antidiscrimination laws,[13] is used by five states, as indicated in Table 4-2 (pages 42-43).

Table 4-1

Scope of Physical and Mental Disability Covered under State Employment Protection Laws

State and Region	Laws Cover Physical Disability Only	Laws Cover Physical and Mental Disability
New England		
Connecticut		x
Maine		x
Massachusetts		x
New Hamsphire		x
Rhode Island		x
Vermont		x
Mideast		
Delaware	x	
DC (Washington)		x
Maryland		x
New York		x
New Jersey		x
Pennsylvania		x
Great Lakes		
Illinois		x
Indiana		x
Michigan		x
Ohio		x
Wisconsin		x
Plains		
Iowa		x
Kansas	x	
Minnesota		x
Missouri		x
Nebraska		x
North Dakota		x
South Dakota		x
Southeast		
Alabama	x	
Arkansas	x	
Florida	x	
Georgia		x
Kentucky	x	
Louisiana		x
Mississippi	x	
North Carolina		x
South Carolina		x
Tennessee		x
Virginia		x
West Virginia		x
Southwest		
Arizona	x*	
New Mexico		x
Oklahoma		x
Texas		x
Rocky Mountain		
Colorado	x	
Idaho	x	
Montana		x
Utah		x
Wyoming		x
Far West		
Alaska		x
California		x
Hawaii	x	
Nevada	x	
Oregon		x
Washington		x
Number of States	**12**	**39**

* The Arizona statute provides that is the policy of the state not to discriminate against persons treated or evaluated for mental disorders. The provision, however, does not specifically prohibit discrimination on the basis of mental disability. Hence Arizona is included in this category.

The second approach is to include prohibitions against discrimination on the basis of handicap in either the fair employment, nondiscrimination section of state law or in sections that stipulate the rights of persons with disabilities. These legal measures provide much stronger protections because they outlaw employment discrimination related to disability and extend to both *public and private* employers (sometimes with some limit on the private employers covered). There are two variations on this second approach. In the first, the prohibition of employment discrimination in public and private employment is extended only to persons with physical disability; this is the approach taken by eight states. The second variation is to prohibit employment discrimination in the public and private sectors on the basis of both physical and mental disability. This approach, extending the greatest coverage of employment protections, is taken by 38 states.

Even when private employers are included under nondiscrimination prohibitions on the basis of handicap, however, state laws often provide many exceptions to compliance. The most common, found in the laws of 32 states, is to exempt small businesses (see

Table 4-2

Scope of Employment Protections Provided in State Laws

Region and State	Public Employer Only Covered		Public and Private Employers Covered	
	Only Physical Disability Covered	Mental & Physical Disability Covered	Only Physical Disability Covered	Physical & Mental Disability Covered
New England				
Connecticut				x
Maine				x
Massachusetts				x
New Hamsphire				x
Rhode Island				x
Vermont				x
Mideast				
Delaware	x			
Dist. of Columbia				x
Maryland				x
New York				x
New Jersey				x
Pennsylvania				x
Great Lakes				
Illinois				x
Indiana				x
Michigan				x
Ohio				x
Wisconsin				x
Plains				
Iowa				x
Kansas			x	
Minnesota				x
Missouri				x
Nebraska				x
North Dakota				x
South Dakota				x

* Alaska is counted twice in this table because it has one statute that extends protections to physically handicapped persons in public and private employment and another statute that grants protections to both physically and mentally handicappecd persons in publicly funded employment.

Table 4-3, pages 44-45). The threshold level of employment that activates coverage varies across the states from 2 to 15 employees. Another type of exemption is one for religious-affiliated organizations; this exemption is included in 16 state laws. Still other exemptions include those for private clubs and associations with nonprofit status, and for farm and domestic workers.

Complaint Procedures, Remedies, and Penalties

Redress for cases of employment discrimination usually begins, under state law, by filing a complaint with a designated state enforcement agency and/or with a state court.[14] State enforcement agencies generally investigate, and if discrimination is found the agency may move to facilitate mediation between employers and handicapped workers or take the case to civil court. Tremendous differences exist across the states in the procedures for handling discrimination complaints, including procedures about the amount of time within which complaints must be filed.

State laws also differ in remedies for established cases of discrimination on the basis of handicap. Many state laws provide that "cease and desist" orders may be issued and that affirmative relief may be granted. Some states also provide that attorney's fees may be awarded to prevailing parties. In addition to

Table 4-2 (cont.)

Scope of Employment Protections Provided in State Laws

Region and State	Public Employer Only Covered		Public and Private Employers Covered	
	Only Physical Disability Covered	Mental & Physical Disability Covered	Only Physical Disability Covered	Physical & Mental Disability Covered
Southeast				
Alabama	x			
Arkansas	x			
Florida			x	
Georgia				x
Kentucky			x	
Louisiana				x
Mississippi	x			
North Carolina				x
South Carolina				x
Tennessee				x
Virginia				x
West Virginia				x
Southwest				
Arizona			x	
New Mexico				x
Oklahoma				x
Texas				x
Rocky Mountain				
Colorado			x	
Idaho	x			
Montana				x
Utah				x
Wyoming				x
Far West				
Alaska		x*	x*	
California				x
Hawaii			x	
Nevada			x	
Oregon				x
Washington				x
Number of States	**5**	**1**	**8**	**38**

these remedies, some states—including Alaska, California, Maine, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Vermont, Washington, and West Virginia—stipulate that those who violate prohibitions against discrimination on the basis of handicap are subject to misdemeanor charges or civil penalties. Such penalties put some teeth into nondiscrimination mandates.

Comparing State and Federal Laws concerning Employment Protections

The primary way in which state employment protection laws are more expansive than their federal counterparts is that many of them extend to private as well as public employers. This is significant, because the private sector surpasses the public sector in terms of both employers and jobs.

At the same time, the fair employment laws of some states are weaker than federal employment protections, because the federal government (1) includes mental disability within the set of protected conditions and (2) stipulates that both its own agencies and recipients of federal financial assistance must make reasonable accommodation to employ, and advance in employment, qualified handicapped persons. As noted above, 12 states do not protect per-

Table 4-3

Types of Private Employers Exempted from Coverage under State Employment Protection Laws[1]

Region and State	All Private Employers	Small Employers[2]	Religious Organizations	Private Clubs and Associations	Farm and Domestic Workers
New England					
Connecticut		3			
Maine			x	x	
Massachusetts		6	x	x	
New Hamsphire		6	x	x	
Rhode Island		4	x		
Vermont					
Mideast					
Delaware	x				
DC (Washington)					x
Maryland		15			
New York		4			
New Jersey					
Pennsylvania		4		x	
Great Lakes					
Illinois		15	x		
Indiana		6	x	x	
Michigan		4			
Ohio		4			
Wisconsin				x	
Plains					
Iowa		4	x		x
Kansas		4	x		
Missouri		6	x		
Minnesota			x		
Nebraska		15	x		
North Dakota		10			
South Dakota					

[1] Since states can have multiple exemptions, the categories in the table are not mutually exclusive.

[2] When a number is listed in this column, it means that the state has a threshold employer size that triggers coverage by employment protection provisions. The number itself signifies the threshold level established by state law.

sons with mental disabilities from employment discrimination and about half do not require reasonable accommodation.

STATE LAWS GOVERNING REMOVAL OF PHYSICAL BARRIERS

Every state and the District of Columbia have some form of statute providing for removal of architectural barriers in public buildings to enhance the accessibility of these facilities to persons with disabilities.[15] These statutes vary substantially, however, in their length and detail, the types of building and construction covered, identification of accessibility standards, applicability to renovated or reconstructed buildings, the specification of conditions when waivers from accessibility standards may be granted, and enforcement.

Types of Buildings and Facilities Covered by State Laws

One significant variation among state laws providing for building accessibility is in specification of exactly what buildings and facilities are covered. Appendix B provides a detailed listing of the state statutes regarding removal of architectural barriers, with information on the nature and types of buildings covered.[16]

All states have some form of law requiring that buildings and facilities constructed with the funds of the state or its political subdivisions meet some set of accessibility standards. Thirty-two states also include

Table 4-3 (cont.)

Types of Private Employers Exempted from Coverage under State Employment Protection Laws[1]

Region and State	All Private Employers	Small Employers[2]	Religious Organizations	Private Clubs and Associations	Farm and Domestic Workers
Southeast					
Virginia					
West Virginia		12		x	
Kentucky		8			
Tennessee					
North Carolina		15			x
South Carolina					
Georgia		15			
Florida		15			
Alabama	x				
Mississippi	x				
Louisiana		15			
Arkansas	x				
Southwest					
Oklahoma		15		x	
Texas		15			
New Mexico		4			
Arizona		15		x	
Rocky Mountain					
Montana			x	x	
Idaho	x				
Wyoming		2	x		
Colorado			x		
Utah		15	x		
Far West					
Washington		8			
Oregon		6			
Nevada		15	x	x	
California		5	x	x	
Alaska		15	x	x	
Hawaii					
Number of States		**33**	**16**	**15**	**3**

some form of privately owned or constructed buildings under accessibility regulations (see Table 4-4); these states and the types of private buildings and facilities covered by their laws are listed in Figure 4-1.

The data presented in Table 4-4 show that states which require accessibility only in public buildings are heavily concentrated in the South and West. States in New England and the Midwest mostly extend coverage to both public and private buildings.

There is wide variation across the states in terms of the types of private buildings and facilities covered by accessibility requirements. The broadest statutes include all privately constructed buildings and/or all buildings used by the general public. Many states, while extending coverage to private buildings and facilities, have not made the coverage complete. Instead, the statutes specify what buildings and facilities are covered; often this specification is made in terms of the functions or purposes for which the buildings are used. Thus, many states require accessibility in buildings used for employment, education, retail sales, entertainment, and/or a whole series of specified building functions.

The language of some state laws, while placing accessibility requirements on some private buildings and facilities, also specifically exempts other private buildings. Several states grant exemptions for private residences and historic buildings. Other types of exemptions are granted to: small businesses (Kentucky), warehouses (New Jersey, West Virginia), hazardous occupancies (New Jersey, West Virginia), public housing (New York), buildings in counties with

Table 4-4

Scope of State Barrier Removal Laws, Types of Buildings Covered[1]

State and Region	Public Buildings Only	Public Buildings Plus Some Private Buildings
New England		
Connecticut		x
Maine		x
Massachusetts		x
New Hamsphire	x	
Rhode Island		x
Vermont		x
Mideast		
Delaware	x	
DC (Washington)		x
Maryland	x	
New York		x
New Jersey		x
Pennsylvania		x
Great Lakes		
Illinois		x
Indiana		x
Michigan		x
Ohio		x
Wisconsin		x
Plains		
Iowa		x
Kansas		x
Minnesota		x
Missouri	x	
Nebraska		x
North Dakota		x
South Dakota	x	
Southeast		
Alabama	x	
Arkansas	x	
Florida		x
Georgia		x
Kentucky		x
Louisiana		x
Mississippi	x	
North Carolina		x
South Carolina		x
Tennessee		x
Virginia	x	
West Virginia		x
Southwest		
Arizona		x
New Mexico	x	
Oklahoma	x	
Texas		x
Rocky Mountain		
Colorado		x
Idaho	x	
Montana	x	
Utah	x[2]	
Wyoming	x	
Far West		
Alaska	x	
California	x	
Hawaii	x	
Nevada	x	
Oregon		x
Washington		x
Number of States	**19**	**32**

[1]See Figure 4-1 for details on types of buildings covered, and Figure 4- 2 for the responsible agencies.

[2]Utah has a state statute which encourages, but does not require, application of accessibility standards in buildings constructed with federal funds. Since standards are not required, Utah is included in this column.

small populations (Texas), family residences registered as day care centers (Vermont), field service facilities (West Virginia), and buildings with small floor space (Oregon).

Accessibility Standards

State laws take several approaches to specifying guidelines or standards to achieve accessibility (see Table 4-5). Some states specify accessibility standards within the statute; in many cases, these standards simply reference the language of the accessibility guidelines devised by the American National Standards Institute (ANSI). Other states simply reference the ANSI standards without including their text in the statute. Six states—Mississippi, Montana, Nevada, Oklahoma, Oregon, and Tennessee—have laws that reference standards other than those developed by ANSI. Four of these states have laws that reference some form of federal accessibility guidelines: Mississippi and Montana reference the Uniform Federal Accessibility Standards developed by the four agencies charged in the federal *Architectural Barriers Act* with setting accessibility standards;[17] Nevada references the Minimum Federal Require-

ments for Accessible Design as devised by the U.S. Architectural and Transportation Barriers Compliance Board; and Oregon references some rules of the U.S. Department of Transportation for its transit facilities. Tennessee stipulates a portion of the North Carolina building code, and Oklahoma law references standards developed by the Building Officials and Code Administrators International organization.

Some state statutes grant one or more agencies of state government the responsibility for promulgating accessibility standards. These agencies may select ANSI or some other set of accessibility guidelines for use within their state. Currently, the laws of 29 states designate a state agency with responsibility for promulgating accessibility standards. Figure 4-2 lists the various state agencies charged with issuing design standards. Generally, responsibility for accessibility standards is given to state agencies that deal with public buildings, building codes, or community development. Often, these agencies adopt the ANSI accessibility standards for use in their state.

It is clear from the information provided in Table 4-5 (pages 48-49) that many states employ multiple approaches to design standards. It is not uncommon for a state to provide some statutory specifications about accessibility and to reference the ANSI standards for other accessibility matters. It is similarly common for states to grant responsibility for the design of accessibility standards to a state agency while also stipulating that ANSI and perhaps other standards be considered by these agencies. Overall, the ANSI standards are the ones most frequently used, although their application is not universal across the states.[18]

Accessibility in New and Old Buildings

Substantial variation exists in the application of state accessibility regulations to existing buildings and facilities. While state statutes consistently call for some form of accessibility in newly constructed buildings, the laws differ as to how accessibility may be achieved in existing buildings and structures.[19] Some states specifically exempt buildings constructed before the development of accessibility standards; others require modifications for accessibility at the time other structural changes or renovations are made to a building. Only a small number of states require more positive action to remodel existing buildings at times other than planned structural modifications. There exist in state laws, therefore, few parallels to the federal government's mandate to achieve program accessibility in public buildings and programs.

Waivers and Enforcement Mechanisms

Two other issues are relevant to state laws governing accessibility and removal of architectural barriers: (1) waivers from compliance and (2) enforcement mechanisms. Both of these factors affect the ultimate effectiveness of the accessibility standards.

Many states have laws that provide for conditions under which accessibility requirements can be waived. Generally, waiver conditions make reference to such factors as the impracticality of modifications, undue hardship resulting from the costs associated with removing barriers, protecting the integrity of historical buildings and facilities, and size (with exemptions possible for small facilities).[20]

In terms of enforcing accessibility requirements, most state laws grant enforcement power to one or more state agencies; in three or four cases, such power rests with a specialized architectural barriers compliance board.[21] In a few states, a violation of accessibility mandates is a misdemeanor, and in a few other cases, individuals are allowed to pursue private remedies in court.

Comparing State and Federal Laws Concerning Accessibility

Federal policies concerning architectural accessibility have two components: (1) the *Architectural Barriers Act* requires that newly constructed and otherwise renovated federal buildings be made accessible, while (2) program accessibility, mandated through section 504, stipulates that programs operated by recipients of federal funds be modified so that essential features are made accessible to persons with disabilities. The laws in many states go further than federal law because they place an accessibility mandate on private as well as public buildings. It needs to be reiterated, however, that even in states where private buildings are covered there are sometimes significant exceptions and waiver possibilities that modify the coverage of the law.

Like the *Architectural Barriers Act,* the laws of many states require accessibility modifications in existing buildings only at times when structural changes are being made. Few states, however, provide for any similar program accessibility, that is, for making changes in existing facilities to provide access to the essential components of programs or services.

ASSESSMENT OF STATE LAW PROVISIONS FOR DISABLED PEOPLE

It is clear that state legislators have begun to recognize and address the needs of persons with disabilities in the last two decades. Laws governing the removal of architectural barriers tended to come first, often in the 1960s, as elected state and federal officials began to comprehend the extent of physical barriers that society had unwittingly placed in the way of disabled persons. Soon after, states began to modify their fair employment or handicapped rights laws, giving persons with disabilities the same employment protections as other protected classes.

Table 4-5

State Laws and Specification of Accessibility Standards

Region and State	Statute References ANSI	Statute References Other Standard	Statute Specifies Standard	Statute Designates State Agency to Determine Standard
New England				
Connecticut	x			
Maine	x		x	
Massachusetts				x
New Hampshire				x
Rhode Island				x
Vermont	x			
Mideast				
Delaware	x		x	
DC (Washington)			x	
Maryland	x		x	x
New York				x
New Jersey			x	x
Pennsylvania			x	
Great Lakes				
Illinois				x
Indiana				x
Michigan				x
Ohio			x	x
Wisconsin	x		x	x
Plains				
Iowa			x	x
Kansas	x			x
Minnesota				x
Missouri			x	
Nebraska			x	
North Dakota	x		x	
South Dakota	x			

In terms of accessibility, action by the federal government focused on passage of the *Architectural Barriers Act* in 1968 and the creation of a body to oversee implementation of the act, the Architectural and Transportation Barriers Compliance Board, created in 1973. Legal action to remove barriers in the states has been pursued by modifying statutes to require that newly constructed facilities and renovated buildings be made accessible, often according to standards devised by the American National Standards Institute.

Some commentators, as well as groups representing people with disabilities, argue that many state laws have not gone far enough in removing physical barriers. Don Nicolai and William Ricci, for example, argue that many state laws are deficient in that they do not cover (1) all private buildings, (2) buildings constructed prior to the development of accessibility standards and mandates, and (3) much leased property:

> The vagueness and underinclusiveness of state access statutes render them ineffective in expanding the mobility of the disabled. Although most public buildings fall within the ambit of state access statutes, in many states privately owned buildings and privately owned publicly leased buildings do not. More importantly, ac-

Table 4-5(cont.)
State Laws and Specification of Accessibility Standards

Region and State	Statute References ANSI	Statute References Other Standard	Statute Specifies Standard	Statute Designates State Agency to Determine Standard
Southeast				
Alabama	x			x
Arkansas				
Florida	x			x
Georgia	x			
Kentucky				x
Louisiana	x		x	
Mississippi	x	x	x	
North Carolina				x
South Carolina	x			x
Tennessee		x		x
Virginia				x
West Virginia	x			x
Southwest				
Arizona	x		x	
New Mexico				x
Oklahoma		x		
Texas	x			x
Rocky Mountain				
Colorado			x	
Idaho	x			
Montana		x		
Utah				x
Wyoming	x		x	
Far West				
Alaska				x
California	x		x	x
Hawaii	x			
Nevada		x		
Oregon	x	x	x	x
Washington				x
Number of States	**23**	**6**	**19**	**29**

cess statutes rarely apply to buildings already in existence.[22]

To the extent that public policy is intended to remove the full range of physical barriers that reduce the social and economic opportunities of persons with disabilities, it will be necessary for states to extend accessibility requirements to all privately owned buildings and to seek some form of accommodation in buildings constructed before accessibility standards were required.

Like laws regarding architectural accessibility, those concerning prohibitions against discrimination in the employment of people with mental or physical disabilities demonstrate substantial variation. An apparent weakness in the laws of some states is that protections are not extended to (1) persons who experience some form of mental illness or retardation or to (2) private employers. States that exclude individuals with mental impairments from employment protections are taking a policy stance that is weaker than the federal government's position. To date, five states do not extend any coverage to private employers, thus exempting this large group of companies and organizations from prohibitions of discrimination based on handicap.

NOTES

[1] For more detailed descriptions of the advent of workers' compensation programs see Edward K. Berkowitz, *Dis-*

abled Policy: America's Programs for the Handicapped (New York: Cambridge University Press, 1987), and Debra A. Stone, *The Disabled State* (Philadelphia: Temple University Press, 1984).

[2]Berkowitz, *Disabled Policy*, p. 15.

[3]For a comparison of federal and state laws regarding employment protections for persons with disabilities see Lee Miller, "Hiring the Handicapped: An Analysis of Laws Prohibiting Discrimination against the Handicapped in Employment," *Gonzaga Law Review*, Vol. 16, No.1, 1980, 23-56.

[4]For other compilations of state laws that provide employment protections for persons with disabilities see Arno Zimmer, *Employing the Handicapped: A Practical Compilation Manual* (New York: AMACOM, A Division of American Management Associations, 1981), 349-360; President's Committee on Employment of the Handicapped, *Selected State and Federal Laws Affecting Employment and Certain Rights of People with Disabilities* (Washington, DC: the Committee, 1980), pp. 68-80; Charles D. Goldman, *Disability Rights Guide: Practical Solutions to Problems Affecting People with Disabilities* (Lincoln, Nebraska: Media Publishing, 1987), pp. 127-150; Bruce Dennis Sales, D. Matthew Powell, Richard Van Duizend and Associates, *Disabled Persons and the Law: State Legislative Issues* (New York: Plenum Press, 1982), pp. 151-168; and "How State Laws Protect You," *Galludet Today* (1987), pp. 39-48.

[5]The state of Alaska is double counted here because it has two different statutes, one extending employment protections to physically handicapped persons who are employed by public or private employers, the other to both physically and mentally handicapped persons in employment that is publicly funded. See Appendix A for more detail.

[6]This assertion is based on a comparison of the data on state laws presented in Appendix B and up-to-date as of early 1988 with data presented in the President's Committee on Employment of the Handicapped, *Selected State and Federal Laws Affecting Employment and Certain Rights of People with Disabilities,* pp. 68-80, which was current as of the late 1970s.

[7]Note, "From Wanderers to Workers: A Survey of Federal and State Employment Rights of the Mentally Ill," *Law and Contemporary Problems* 45 (1983), p. 44.

[8]Janet A. Flaccus, "Handicapped Discrimination Legislation: With Such Inadequate Coverage at the Federal Level, Can State Legislation Be of Any Help?" *Arkansas Law Review* 40 (1986), pp. 278-280.

[9]Ibid., p. 279.

[10]These states are Louisiana, Massachusetts, Minnesota, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, Virginia, and Wisconsin.

[11]Flaccus, "Handicapped Discrimination Legislation," p. 301.

[12]Ibid., p. 303.

[13]Jana H. Goy, "The Developing Law on Equal Employment Opportunity for the Handicapped: An Overview and Analysis of the Major Issues," *University of Baltimore Law Review* 7 (1978), p. 223.

[14]For a state-by-state review of the complaint procedures, remedies, and penalties contained in state laws protecting persons with disabilities against discrimination see "How State Laws Protect You," pp. 39-48.

[15]For a general discussion of federal and state barrier removal laws see Charles D. Goldman, "Architectural Barriers: A Perspective on Progress," *Western New England Law Review* 5 (1983), pp. 465-490.

[16]For other compilations of state laws related to removal of architectural barriers, most put together in the late 1970s, see Sales, Powell, Van Duizend and Associates, *Disabled Persons and the Law: State Legislative Issues,* pp. 224-276; Paul Hearne, ed., *Legal Advocacy for the Handicapped: A Legal Services Practical Manual* (Washington, DC: Legal Services Corporation, 1981), Appendix 2B; President's Committee on Employment of the Handicapped, *Selected State and Federal Laws Affecting Employment* 14-41; and Charles D. Goldman, *Disability Rights Guide: Practical Solutions to Problems Affecting People with Disabilities* (Lincoln, Nebraska: Media Publishing, 1987, 127-150.

[17]The Uniform Federal Accessibility Standards were developed by the General Services Administration and the departments of Defense and Housing and Urban Development, and the U.S. Postal Service as required by the *Architectural Barriers Act.* The design of these uniform standards is intended to conform with the Minimum Federal Requirements for Accessibility as designed by the U.S. Architectural and Transportation Barriers Compliance Board. The uniform standards were first published at 49 *Federal Register* 31528 on August 7, 1984.

[18]Goldman, *Disability Rights Guide*, 50.

[19]Don Nicolai and William J. Ricci, "Access to Buildings and Equal Employment Opportunity for the Disabled: A Survey of State Statutes," *Temple Law Quarterly* 50 (1977), pp. 1067-1085.

[20]Goldman, *Disability Rights Guide*, 50; Nicolai and Ricci, "Access to Buildings and Equal Employment Opportunity for the Disabled," 1076; The President's Committee on Employment of the Handicapped, *Selected State and Federal Laws Affecting Employment and Certain Rights of People with Disabilities*, p. 15.

[21]Nicolai and Ricci, "Access to Buildings and Equal Employment Opportunity for the Disabled," p. 1077.

[22]Ibid., p. 1085.

5

Factors Influencing Compliance with Disability Rights Mandates

This chapter analyzes factors that influence the propensity of public agencies to conform to regulatory mandates concerning architectural barrier removal and equal employment protections for persons with disabilities. The discussion is intended as a theoretical backdrop for the assessments of regulatory compliance that follow in the next two chapters.

Regulatory compliance can be split into a pair of related yet distinct issues. First, there is an *intra*governmental issue of compliance by federal agencies with the *Architectural Barriers Act* and section 501 of the *Rehabilitation Act of 1973*. Second, there is the *inter*governmental issue of state government compliance with federal mandates.

THE GROWTH IN FEDERAL REGULATORY MANDATES

As described in the first chapter, the federal government initiated in the mid-1960s what many observers have identified as a new era of regulatory activity. Whereas early regulatory activities focused mainly on the economy and the marketplace, and to a lesser extent on public health, the focus of more recent federal regulatory actions has been on what has been termed "social regulation"[1] or "protective regulation."[2] The primary objective of such regulation is to protect individuals who may receive harmful or unfair treatment in the economic and social life of the nation. Clearly, the policy issues of relevance to this study—equal employment opportunity and removal of architectural barriers for persons with disabilities—fall under the rubric of social regulation.

Prior to the current period of social regulation, governmental regulation typically involved efforts on the part of the public sector to structure or change the behavior of individuals, organizations, or industries in the private sector. This focus on the private sector has changed over time, sometimes as government itself has become a target of social regulation. This shift is not surprising when one recognizes the expansion that has occurred in public sector activities and responsibilities. As such activities have grown and the extent of regulatory action has expanded, *governments have found themselves seeking to regulate not only private individuals and businesses but also their own agencies.*

The rise of governmental self-regulation is evident in the national government as the Congress has placed mandates on the practices of executive branch agencies and administrative bodies. Relevant here are efforts by the federal government to pursue disability rights within its own agencies and operations, including mandates to provide equal employment opportunity and to remove architectural barriers that impede the access of persons with disabilities to federal buildings, facilities, and services.

In many ways, intragovernmental regulation is virgin territory for serious research. With the princi-

pal exception of research on the Environmental Protection Agency's efforts to regulate the Tennessee Valley Authority,[3] most research examining administrative federalism has concentrated on the implementation of federal programs within the system of intergovernmental relations. This research has focused on regulatory requirements attached to grants-in-aid. As the federal, state, and local governments find themselves regulating their own activities, they are treading on relatively unexplored territory. As Robert Durant has noted, for example: "Despite the increasing necessity of implementing national goals within the federal establishment, there is a paucity of systematic research dealing explicitly with this topic."[4]

The next section of this chapter explores intragovernmental regulation mechanisms used by the federal government to exert and police compliance with mandates to protect disability rights. Next, intergovernmental implementation of regulatory mandates is considered, as the federal government seeks to change the behavior of state and local governments. Finally, the chapter examines compliance with disability rights mandates from the perspective of regulated agencies, professions, and politics.

REGULATION IN THE INTRAGOVERNMENTAL CONTEXT

With regard to federal disability rights, public laws have created several mandates, including those set forth in sections 501 and 504 of the *Rehabilitation Act of 1973* and the *Architectural Barriers Act of 1968*, that require compliance by federal agencies. Two alternative strategies have been formulated to execute these regulations and oversee compliance with them. These are the *coordinating* and *directing* approaches.

In the coordinating model, each administrative agency is expected to formulate its own regulations to carry out mandates. Generally, when this strategy is employed, an oversight body is created to provide some coordination across agencies. This has been the federal government's strategy in implementing section 504.[5] At first, the Department of Health, Education, and Welfare (HEW) was assigned coordinating responsibility for implementing section 504; later, this responsibility was shifted to the U.S. Department of Justice.[6] The primary instrument of coordination has been guidelines or standards set by the coordinating agency to be used by the other agencies when designing their own regulations for implementation.[7]

Another example of the coordination approach is the Architectural and Transportation Barriers Compliance Board (ATBCB). Dissatisfied with the pace with which the *Architectural Barriers Act* was being implemented by agencies on their own, the Congress created the ATBCB through section 502 of the *Rehabilitation Act of 1973*. In 1978 the Congress directed the ATBCB to issue guidelines for the standard-setting agencies—the departments of Defense and Housing and Urban Development, the General Services Administration, and the U.S. Postal Service—in designing their own accessibility guidelines. The board also reports to the Congress on the status of implementation efforts.

The second approach to intragovernmental regulation is for one executive agency to be granted primary responsibility for directing implementation across all executive agencies. The directing agency takes the key role of creating administrative regulations with which other agencies are expected to comply. In the case of equal employment opportunities for persons with disabilities, implementation responsibility was initially vested in the U.S. Civil Service Commission. As a result of the *Civil Service Reform Act*, implementation responsibility was transferred to the revamped Equal Employment Opportunity Commission (EEOC) in 1978. EEOC has since promulgated regulations and management directives relevant to implementation of section 501 of the *Rehabilitation Act of 1973*. Each federal agency is expected to comply with these guidelines when hiring, evaluating, and promoting individuals within the agency.

One might anticipate that intragovernmental regulation—implemented through either the coordinating or directing approach—would be relatively easier and simpler than regulating state and local governments. However, just the opposite might be true. Wilson and Rachal argue that, "Even within the same level of government, an agency will have great difficulty in attaining its goal if, to do so, it must change the behavior of another agency."[8] This argument is based on the recognition that a federal agency implementing a regulatory mandate may have more power over a state or local government than it has over its peer agencies within the federal government. While the federal government can threaten to cut off—and can terminate—the flow of fiscal transfers to state or local governments that do not comply satisfactorily with regulatory mandates, coordinating and directing agencies are practically never given such power over their peer agencies.

The power given to regulatory enforcers with regard to other federal agencies is more oversight and review than sanction. The most effective power over agency actions is wielded indirectly by other branches of government, namely, the Congress or the federal courts. Through the legislative process, the Congress can enact or change laws specifying or prohibiting various behavior. Congress can also resort to the appropriation process as a means of control. Recalcitrant agencies might be threatened with the loss of

appropriated funds or be clearly directed to comply with regulatory mandates. These legislative decisions, in turn, provide parties concerned with unsatisfactory compliance the opportunity to appeal to the courts for stronger actions by the executive branch.

The ability of the Congress to pursue regulatory initiatives within the federal government can be enhanced greatly by the agencies created to coordinate or direct implementation. These agencies—including the EEOC and the ATBCB—often undertake studies and analyses that describe the extent of agency compliance with regulatory mandates. The provision of this information enhances Congress' knowledge about implementation and can directly stimulate congressional oversight to spur compliance with mandates. Information on compliance often becomes public, and may be used by interest groups and other parties to press for changes in the conduct of executive branch activities.

The power of coordinating and directing agencies, therefore, tends to be indirect. To enforce behavioral changes, such agencies must gather information that can be used by other governmental actors to push agencies to move forward more aggressively with compliance. This form of enforcement power is quite different from the activation of funding cutoffs which, while seldom practiced against state and local governments, have served as a potent stimulus to compliance with federal regulatory mandates.

REGULATION IN THE INTERGOVERNMENTAL CONTEXT

As the federal government has sought to regulate state and local governments, sometimes it has had sufficient constitutional authority or political power to mandate regulatory changes directly through orders in public laws. More often, however, the federal government has turned to other means to regulate state and local governments, such as mandates activated through requirements attached to federal funding. Recipients of federal funds are required to comply with such mandates or risk loss of future federal funds. The magnitude of federal funds has made it politically difficult, if not impossible, for most state and local governments to ignore federal grant programs and the mandates attached to them.

The creation of federal mandates within the system of intergovernmental relations has generated debates and tensions about which type of government should take action to change public and private sector behavior. From the state and local perspective, regulatory mandates are sometimes viewed as unnecessary and unwanted intrusions on the conduct of their affairs. The fiscal sanctions make it difficult, however, for state and local governments to ignore these mandates.

A second recurrent issue in the implementation of regulatory mandates in the intergovernmental system involves the costs of compliance. These costs are sometimes perceived as a burden by state and local officials, who often spend time pleading in national forums for greater federal funding to help them implement regulatory mandates.

From the national perspective, the implementation of regulatory mandates requires the federal government to monitor the compliance actions of recipients of federal financial assistance. This can often be an overwhelming task, as administrative agencies try to review incoming reports on the compliance activities of state and local governments as well as investigate complaints and other identified problems. The central purpose of federal agencies, when implementing regulatory mandates within the intergovernmental system, is to ensure that compliance with such mandates is not harmed by neglect, misunderstanding of mandate objectives, and subversion of mandate intents.

REGULATORY COMPLIANCE: THE AGENCY VIEW

Perhaps the best means of identifying influences on compliance with regulatory mandates is to assume the perspective of the public agencies whose behavior the mandates seek to change. From this vantage point, it is possible to see the dilemmas that agencies face and the impediments they may encounter in carrying out regulatory mandates.

Regulatory mandates ordinarily require agencies to undertake new or different types of actions aimed at achieving governmentwide objectives rather than agency-specific objectives. Thus, when the federal government moves to implement an equal opportunity program, it does so by placing requirements on the employment practices of administrative agencies. From the agency's perspective, the regulatory requirements mean taking actions that require use of the agency's limited resources but which may not be seen as contributing to the agency's central mission. Because such mandates tend to disrupt established behavioral routines and consume scarce resources, an agency may not embrace new social regulation mandates with open arms. Furthermore, agencies usually are rewarded more for performing long-standing missions than for contributing to the fulfillment of regulatory mandates that are not central to their missions.

From an administrative agency's perspective, regulatory mandates to pursue equal employment protection, architectural accessibility, or other objectives may be viewed as anything from a welcome change to a nuisance to an outright affront. Several factors work to influence the propensity of agencies to comply with regulatory mandates. These factors

include leadership, congruence of regulatory mandates with agency missions, communication, resource allocations, threats to agency autonomy posed by the mandates, and urgency of the problems underlying mandate objectives. For the most part, these factors often are not understood or even debated by the Congress before enactment of the mandate.

Leadership

Leadership by top agency officials can influence the attention that members of an administrative agency grant to compliance with regulatory mandates. While governmental agencies are granted specific service assignments and responsibilities by public laws or executive orders, such responsibilities generally entail many types of service-rendering activities. This means that administrative agencies are simultaneously involved in the execution of many types of activities designed to contribute to fulfillment of the agency's central mission.

One key task of agency leaders is to set priorities for strategic actions in the agency. Sometimes, such priorities result from the allocation of agency resources to internal functions; those that receive the greatest share of resources typically are those of most importance to leaders. In other instances, priorities can be set by verbal and written communications that serve as signals that leaders consider various activities, including complying with mandates, as important tasks to the agency.

Agency compliance with regulatory mandates can generally be enhanced by leadership commitment to the objectives of such mandates. When leaders signal interest in such mandates through commitment of funds, public statements, written directives, or other means, the personnel responsible for implementing the mandates are more likely to be aggressive in their work as they seek to satisfy top management. Unless the climate in the agency fosters efforts to frustrate the initiatives of top leaders, which is far more the exception than the rule, leadership can be expected to foster greater compliance with regulatory mandates.

Congruence of Agency Mission and Regulatory Mandate

A second likely influence on regulatory compliance is the congruence between an agency's mission and the objective of the regulatory mandate. Other things being equal, the more similar these two, the more likely that compliance with regulatory mandates will be enhanced. This postulation is based on the assumption that when mandates are congruent with missions, agency personnel will already have (1) expertise and experience relevant to mandate implementation, (2) familiarity with and commitment to serving the group(s) intended to benefit from the mandate, and (3) an understanding of the means needed to pursue effective implementation.

In the area of disability rights, several federal agencies serve, as a major clientele group, persons with mental or physical disabilities. These include the Veterans Administration (medical treatment), the Department of Education (education of handicapped children), the Department of Health and Human Services (vocational rehabilitation, income support programs), Equal Employment Opportunity Commission, Architectural and Transportation Barriers Compliance Board, and the National Council on the Handicapped. These agencies are far more directly involved than others in serving and assisting persons with mental and physical disabilities. If the hypothesis above is correct—that congruence between agency mission and mandate objectives positively influences compliance—then these agencies would be expected to perform better than others on measures of equal employment opportunity and barrier removal.

Communication

The implementation of regulatory mandates, like that of other programs, can be enhanced by regular and effective communication between those directing the implementation and those expected to comply with the mandates. In the intragovernmental context, communication is necessary between the coordinating or central implementing agency and the other agencies to which the mandate applies. Communication is also needed within agencies to instruct personnel about activities that must be performed to achieve compliance. In the intergovernmental context, such communication involves the transfer of information to the relevant state and local governments.

One might assume that information transfer within one level of government, say the federal government, would be much more easily accomplished than communication across governmental levels. Whether or not this is true, one should not underestimate the potential pitfalls to effective communications between agencies. Federal agencies are bombarded with all types of communications, and it is possible that those related to implementing a regulatory mandate may be slow in reaching the appropriate offices or persons responsible for agency implementation.

Communications regarding implementation of regulatory mandates—both between and within administrative agencies—can be complex and may be contained in detailed guidelines, standards, and processes for policy execution. Implementation can be thwarted by instructions or reporting forms that are ambiguous. If instructions, guidelines, or standards are unclear or contradictory, then the individuals responsible for implementing regulatory

mandates may be confused about how to proceed. When such confusion is linked with low agency enthusiasm for the mandate itself, the aggressiveness of compliance may be severely hampered.

In sum, communication between agencies at the same level of government, within agencies, and across levels of government can have a major impact on the relationship between regulating and regulated agencies and the level of compliance achieved. Succinctly put, Deil Wright contends that: "Greater openness and frequency of communication among actors will lead to increased cooperation. Exchanges of information and expressions of interest across intergovernmental boundaries are prerequisites for establishing trust and respect on which intergovernmental relations cooperation is normally based."[9]

Fragmentation of Responsibility for Implementation

Communication and other administrative problems can arise from a fragmentation of responsibility for coordinating or directing the implementation of federal mandates. If multiple agencies are involved in formulating instructions and guidelines, and if these are created and communicated separately, then the agencies expected to comply with regulatory mandates may be confused as to which directions to follow and how to behave when the instructions contain conflicting signals. This problem of fragmented directives is highlighted in the intergovernmental system where state and local governments have established relationships with a large number of federal agencies. When federal directives are conflicting or contradictory, state and local implementation is often slowed or halted until such time as a clear and consistent picture of mandated activities emerges.

Fragmentation of responsibility for executing regulatory mandates can also generate turf problems among the agencies charged with implementation. With multiple regulators, it is possible for different approaches, priorities, and regulations to evolve with regard to individual mandates. In such circumstances, it is not clear which of the competing approaches or regulations is appropriate or correct. The resulting confusion and turf struggles among agencies work to impede effective implementation of mandates.

Resources and Agency Autonomy

The propensity of an agency to comply with intra or intergovernmental mandates is likely to be influenced by the extent to which the mandate impinges on the autonomy of the agency and the resources required to carry out the mandate. As Wilson and Rachal argue, "A government agency operates in a milieu of politically supervised autonomy. All organizations value autonomy and strive to reduce threats to it."[10] Any agency's autonomy may be threatened to the extent that the regulatory mandate requires activities that either have little relationship to the agency's mission, or, more fundamentally, if the activities harm or impede that mission.

Autonomy can also be threatened if regulatory mandates require that substantial resources be allocated in pursuit of the mandate. Unless the mandate is accompanied with extra funds to finance implementation, which often is not the case, then agencies must divert resources from their central missions to executing the mandate. Such resource diversion is often perceived as threatening to the agency.

These arguments would suggest that compliance with regulatory mandates would be greatest where such mandates pose little threat to agency autonomy and require limited amounts of agency resources. Wilson and Rachal hold that this is the case, for example, with the General Services Administration's program to ensure that all motor vehicles operated by the federal government are equipped with seat belts and emission control systems. In their words, "Since there is no real cost in money or autonomy to the agency for operating a safe and nonpolluting car, it happily operates them."[11] However, when regulatory mandates seek to initiate or change behavior that is seen by agencies as threatening to autonomy or requiring significant resources, the speed and aggressiveness of compliance may be impeded.

Urgency

It can be anticipated that the greater the perceived urgency of the problem that underlies the regulatory mandate, the more aggressive compliance efforts will be.[12] This aggressiveness is born of agency recognition that many policy actors are scrutinizing compliance actions with the expectation that progress be made. For example, the regulation of financial institutions and the banking industry often takes on urgency during times of increased insolvency. At other times, the regulatory mandates are perceived as more or less routine matters, and outside scrutiny is less frequent.

Competition among Mandates

One final influence on the effectiveness of regulatory implementation concerns the degree of competition with other regulatory mandates and public policies. At any time, both elected officials and agency administrators pay close attention to only a few policy mandates.[13] The attention and priority given to any mandate depends, in part, on how many others there are and the perceived importance of the given mandate to governmental and administrative leaders.

THE IMPACT OF ATTITUDES AND PROFESSIONAL STANDARDS

Another major factor that affects intra and intergovernmental implementation of regulatory man-

dates is attitudes that surround the mandate and/or the persons being protected. As noted above, the purpose of most forms of social regulation is to enhance the quality of life of persons who are disadvantaged in social and economic life. In some instances, strong public attitudes and emerging professional standards exist about the appropriateness or necessity of helping certain disadvantaged groups and about the appropriate means of providing assistance. These attitudes and standards often play a direct role in how the legislative process structures a regulatory mandate. Sometimes, negative or unsympathetic attitudes have slowed the rate at which governments have recognized the needs of disadvantaged groups and established social regulations to assist them.

Negative attitudes and misconceptions can also have a strong impact on efforts to implement regulatory mandates. Compliance can be impeded where implementing authorities have either negative views about persons to be served or misconceptions about their needs, aspirations, abilities, and potentials. This issue was examined in the context of persons with disabilities in the second chapter of this report. Many analysts have noted the harmful impact of public misperceptions—which carry over into the conduct of public agencies—on the treatment of and the opportunities available to persons with disabilities. The impact of negative perspectives and misconceptions on the speed and extent of compliance are issues of great significance.

A CLOSING NOTE: REGULATORY POLITICS

Despite popular conceptions, it is clear that efforts to mold and direct the content of public policies do not end at the point at which regulatory mandates are created through public laws, but continue during the implementation process.[14] It is important, therefore, in studies of the execution of regulatory mandates to remain aware of the potential impact of ongoing political struggles.

James Q. Wilson argues that the nature of regulatory politics varies according to the magnitude and breadth of the distribution of the costs and benefits arising from the regulatory mandate.[15] Based on his conception, it is clear that disability rights policies fall into what he terms "interest group politics." Wilson suggests that interest group politics apply when "a subsidy or regulation will often benefit a relatively small group at the expense of another comparable small group. Each side has a strong incentive to organize and exercise political influence. The public does not believe it will be much affected one way or another; though it may sympathize more with one side than the other, its voice is likely to be heard in only weak or general terms."[16]

The beneficiaries of social regulations in this context are persons with disabilities who receive employment opportunities and access to public buildings and facilities. The regulated parties are those agencies and institutions whose behavior must change in order to achieve equal employment opportunity and unlimited access to public buildings. As was clear from the discussion of the legislative histories of disability rights laws, these two groups have often not concurred about many components of disability rights mandates. Beneficiaries have pressed for strong mandates to enhance the protection of their rights and opportunities; regulated groups, while sometimes recognizing the importance of the objective of regulatory mandates, have sought time, resources, and flexibility in achieving mandated objectives.

Although some of the differences between these groups have been worked out during legislative consideration of regulations, many others have spilled over into the administrative process of implementation. Both sides have tried to influence the development of administrative rules, guidelines, and standards that guide the execution of regulatory mandates. Their actions also can overflow into the process of implementation, leading to the potential for a mingling of politics and administration; this, in turn, can impinge on the overall level of compliance with regulatory mandates. As we examine how federal and state agencies have moved to comply with regulations, therefore, it is important to watch for the influence of ongoing political struggles on the compliance activities of regulated agencies and organizations.

NOTES

[1] See, for example, Alan Stone, *Regulation and Its Alternatives* (Washington, DC: Congressional Quarterly Press, 1982); George C. Eads and Michael Fix, *Relief or Reform: Reagan's Regulatory Dilemma* (Washington, DC: Urban Institute Press, 1984); Kenneth J. Meier, *Regulation: Politics, Bureaucracy, and Economics* (New York: St. Martins Press, 1985); and A. Lee Fritschler, "The Changing Face of Government Regulation," in Howard Ball, ed., *Federal Administrative Agencies* (Englewood Cliffs, New Jersey: Prentice-Hall, 1984).

[2] Eugene Bardach and Robert A. Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Philadelphia: Temple University Press, 1982).

[3] See Robert F. Durant, *When Government Regulates Itself: EPA, TVA, and Pollution Control in the 1970s* (Knoxville: University of Tennessee Press, 1985).

[4] Ibid, p. 4.

[5] Section 504, a general statement of nondiscrimination policy, initially pertained to recipients of federal financial assistance; there was language tying the provision to the federal government. This situation was changed through amendments made in 1978 to the *Rehabilitation Act* which modified the language of section 504 so that its provisions clearly were placed upon federal agencies as well as recipients of federal financial assistance.

[6]The Department of Health, Education, and Welfare was given coordinating authority for section 504 through E.O. 11914 (41 *Federal Register* 17871). This coordinating responsibility was shifted to the Department of Justice through E.O. 12250 (45 *Federal Register* 72995).

[7]Each agency, as part of its section 504 responsibility, is also required to issue regulations for all entities that receive federal financial assistance through that agency.

[8]James Q. Wilson and Patricia Rachal, "Can Government Regulate Itself?" *The Public Interest* 36 (Winter 1977) p. 4.

[9]Deil S. Wright, *Understanding Intergovernmental Relations* (Pacific Grove, California: Brooks/Cole Publishing Company, Third Edition, 1988), p. 397.

[10]Wilson and Rachal, "Can Government Regulate Itself?" p. 9.

[11]Ibid., p. 11.

[12]Wright, *Understanding Intergovernmental Relations*, p. 397.

[13]For more detailed discussions of how issues are raised to the decision making agendas of policymakers see John W. Kingdon, *Agendas, Alternatives, and Public Policies* (Boston: Little, Brown and Company, 1984).

[14]For more on this argument see Stephen L. Percy, *Disability, Civil Rights and Public Policy: The Politics of Implementation* (University, Alabama: University of Alabama Press, forthcoming, 1989), chapter 2; and Malcolm L. Goggin, *Policy Design and the Politics of Implementation: The Case of Child Health Care in the American States* (Knoxville: University of Tennessee Press, 1987).

[15]James Q. Wilson, "The Politics of Regulation," in James Q. Wilson, ed., *The Politics of Regulation* (New York: Basic Books, 1980), pp. 357-394.

[16]Ibid., p. 368.

6

State and Federal Compliance with Requirements for Employment Protections

"For people with disabilities, employment is the key issue because employment is the great equalizer."[1] This statement by one activist emphasizes the importance of benefits derived from employment. In addition to financial remuneration, employment can give handicapped persons the satisfaction of being self-supporting, enhanced self-esteem, and the opportunity to leave restrictive settings and participate in mainstream society. Thus, it is not surprising that advocacy groups representing individuals with disabilities have supported traditional vocational rehabilitation programs and pushed to end employment discrimination based on handicap.

The federal and state requirements that public agencies take affirmative action to employ persons with disabilities—described in Chapters 4 and 5—respond to the growing awareness that disabled workers have long faced discrimination in the work place. The federal laws have been in place for about 15 years. Some state employment protection laws predate federal laws, while many other states have followed the federal government's lead. It is possible to draw some picture of the impact of these laws by examining the representation of individuals with disabilities in the federal and state government work forces.

This chapter presents this picture by exploring employment figures for disabled persons in federal and state agencies, and examines information from many sources about the implementation of equal employment opportunity programs in the public sector for persons with disabilities. This analysis provides insights concerning the effectiveness with which employment rights programs have been executed by the federal and state governments.

PROBLEMS OF IDENTIFICATION AND MEASUREMENT

Definitions and Measures

At the outset, it is important to acknowledge the difficulties that confront any researcher who seeks to count or assess disability. The first problem is the diversity of disabling physical and mental conditions. Each poses different problems and limitations[2] and varies in terms of the extent to which it affects the lives and functioning of individuals. Generally, when assessing disability or designing public policies to assist persons with disabilities, one seeks to develop some threshold from which to designate serious conditions that merit public sector attention.

The diversity of disabling conditions, and the multiplicity of definitions used to create categories of "handicapped" or "disabled," make it difficult to compare data across public agencies. This measurement problem even can influence the comparison of data collected for the same agency over many years

because the definition of handicapped persons changes over time.

In an effort to create a definition of disability that focuses attention on the most serious disabling conditions, the EEOC has devised a special category, which it terms "targeted disabilities." This classification was developed with extensive input from national associations representing persons with disabilities, other disability-related organizations, and law centers concerned with disability rights. Included within the targeted disabilities category are the following conditions: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and distortion of limbs and/or spine.[3] Targeted disabilities as a category is a subset of all disabling conditions.

Identification

Even if meaningful classification categories for disabling conditions are developed, researchers still face difficult problems in identifying persons with disabilities in the public sector work force. The federal government has devised a tracking system to measure progress in employing persons with disabilities. This tracking is based on federal Standard Form 256, which all new workers are asked to complete at the time they begin employment; this form can also be updated at any time during job tenure in the federal government. On this form, federal employees are asked to report any disabling conditions that they experience; a large set of disability categories is provided on the form. Collection of data from Standard Form 256 is the primary source of information about individuals with handicaps in the federal government.

The provision of data for this form, however, is voluntary. Workers are not required by law to report their disability. It is generally recognized within the federal government that not all persons with disabilities choose to report them, suggesting that the data underestimates the number of workers with disabilities in the federal work force. The extent of underestimation, however, is very difficult to determine. Similar problems with such data have been encountered by state governments.

EMPLOYMENT OF PERSONS WITH DISABILITIES IN THE FEDERAL WORK FORCE: THE EVIDENCE

Employment in the Federal Work Force

Data are collected regularly and reported by the EEOC on employment of persons with mental and physical disabilities by federal agencies. In its fiscal 1987 report, EEOC reported that as of September 30, 1987, 5.77 percent of the federal work force experienced some form of mental or physical disability.[4] Of these individuals, 1.05 percent had a targeted disability. Thirty percent of those with targeted disabilities experienced some form of mental disability, including mental illness (19 percent) and mental retardation (11 percent). Nine percent of the individuals identified as having a targeted disability experienced blindness, 19 percent deafness, 19 percent partial or complete paralysis, and 13 percent convulsive disorder. The remaining persons in the targeted disability category experienced distortion of limbs or spine or missing extremities.

Table 6-1
Data on Employment of Persons with Disabilities by the Federal Government

Year	Percent of Federal Employees: Individuals with Disabilities	Percent of Federal Employees: Individuals with Targeted Disabilities
1981	5.02	0.80
1982	4.97	0.82
1983	5.14	0.89
1984	5.44	0.96
1985	5.57	1.01
1986	5.61	1.05
1987	5.77	1.09

Source: U.S. Equal Employment Opportunity Commission, *Annual Report on the Employment of Minorities, Women & Individuals with Handicaps in the Federal Government: Fiscal Year 1987* (Washington, DC: EEOC, 1988).

EEOC data, presented in Table 6-1, indicate that the representation of persons with disabilities generally and with targeted disabilities increased slowly during the 1980s. From 1981 to 1986, the percentage of the federal work force that reported having a physical or mental disability rose from 5.02 to 5.77 percent, while the percentage reporting a targeted disability increased from 0.8 percent to just over 1 percent. The EEOC has estimated that individuals with targeted disabilities represent approximately 5.95 percent of those who are of work force age and able to work. By this measure, persons with disabilities remain substantially underrepresented in the federal work force.

Table 6-2 provides data on the employment of handicapped persons by federal agencies with more than 500 employees; the agencies are ranked in order of the percentage of employees with targeted disabilities. Twenty-three (37 percent) of the federal agencies with more than 500 employees reported

Table 6-2

Ranking of Federal Agencies with More than 500 Employees, By Percent of Employees with Targeted Disabilities, 1986

Agency or Department	Total Work Force	Targeted Disability Number	Targeted Disability Percent Work Force	Rank
National Archives and Records	1,829	57	3.12	1
Education	4,761	113	2.37	2
Equal Employment Opportunity Commission	2,967	63	2.12	3
Defense, USUHS	719	15	2.09	4
National Gallery of Art	763	13	1.70	5
Federal Reserve System	1,476	25	1.69	6
Veterans Administration	240,423	4,000	1.66	7
Treasury	139,113	2,203	1.58	8
Defense Mapping Agency	8,878	137	1.54	9
Defense Nuclear Agency	818	12	1.47	10
Securities and Exchange Commission	1,957	28	1.43	11
Defense Logistics Agency	53,304	745	1.40	12
General Services Administration	23,134	323	1.40	13
Air Force	215,890	2,957	1.37	14
Health and Human Services	141,380	1,788	1.26	15
Labor	17,582	218	1.24	16
Federal Communications Commission	1,805	22	1.22	17
Office of Personnel Management	6,193	75	1.21	18
National Guard Bureau	2,523	29	1.15	19
Housing and Urban Development	11,874	136	1.15	20
Army	347,384	3,841	1.11	21
Defense (Department)	1,034,687	11,282	1.09	22
Interstate Commerce Commission	736	8	1.09	23
Governmentwide	2,894,732	30,320	1.05	
Small Business Administration	4,906	51	1.04	24
Defense Investigative Service	4,080	42	1.03	25
Navy	317,456	3,221	1.01	26
Commerce	31,357	314	1.00	27
Federal Emergency Management Agency	2,040	20	0.98	28
National Labor Relations Board	2,383	23	0.97	29
Railroad Retirement Board	1,563	15	0.96	30
National Credit Union Administration	631	6	0.95	31
Defense Communications Agency	2,166	20	0.92	32
U.S. Postal Service	744,628	6,610	0.89	33
Interior	76,795	675	0.88	34
Federal Trade Commission	1,169	10	0.86	35
National Science Foundation	1,171	10	0.85	36
Federal Deposit Insurance Corporation	8,574	71	0.83	37
National Aeronautics and Space Administration	23,175	183	0.79	38
Smithsonian Institution	4,182	32	0.77	39
Federal Energy Regulatory Commission	1,506	11	0.73	40
Environmental Protection Agency	14,371	103	0.72	41
U.S. Information Agency	5,456	39	0.71	42
Energy	16,678	112	0.67	43
Agriculture	122,940	754	0.61	44
Nuclear Regulatory Commission	3,664	22	0.60	45
Soldiers' and Airmen's Home	841	5	0.59	46
Defense Contract Audit Agency	5,058	29	0.57	47
Defense Inspector General	1,087	6	0.55	48
Panama Canal Commission	8,338	46	0.55	49
Federal Home Loan Bank Board	818	4	0.49	50
Tennessee Valley Authority	30,555	146	0.48	51
Agency for International Development	3,420	16	0.47	52
Defense, Office of Secretary	2,818	12	0.43	53
Justice	66,954	284	0.42	54
Transportation	61,842	260	0.42	55
State	16,074	65	0.40	56
Consumer Product Safety Commission	549	2	0.36	57
Army/Air Force Exchange Service	58,764	194	0.33	58
Peace Corps	1,035	3	0.29	59
Executive Office of the President	1,386	3	0.22	60
Defense, Office of Dependent Schools	13,523	19	0.14	61
Farm Credit Administration	520	0	0.00	62

Source: U.S. Equal Employment Opportunity Commission, *Annual Report on the Employment of Minorities, Women & Individuals with Handicaps in the Federal Government Fiscal Year 1986* (Washington, DC: EEOC, 1987), pp. 200–201.

Table 6-3

Ranking of Federal Agencies with Less than 500 Employees, By Percent of Employees with Targeted Disabilities, 1986

Agency or Department	Total Work Force	Targeted Disability Number	Targeted Disability Percent Work Force	Rank
National Council on Handicapped	8	3	37.50	1
Committee for Purchase from the Blind and Other Severely Handicapped	15	3	20.00	2
Architectural & Transportation Barriers Comp. Board	27	5	18.52	3
Postal Rate Commission	54	3	5.56	4
Pension Benefit Guaranty Corporation	442	13	2.94	5
Federal Maritime Commission	209	6	2.87	6
Arms Control and Disarmament Agency	180	4	2.22	7
Export-Import Bank	320	7	2.19	8
National Capital Planning Commission	46	1	2.17	9
Commission on Civil Rights	193	4	2.07	10
Federal Mine Safety and Health Review Commission	50	1	2.00	11
National Endowment for the Humanities	242	4	1.65	12
Action	474	7	1.48	13
Occupational Safety and Health Review Board	71	1	1.41	14
Defense, CHAMPUS	219	3	1.37	15
Governmentwide	2,894,732	30,320	1.05	
Merit Systems Protection Board	311	3	0.96	16
Federal Labor Relations Authority	255	2	0.78	17
National Endowment for the Arts	260	2	0.77	18
Commodity Futures Trading Commission	496	2	0.40	19
Advisory Commission on Federal Pay	2	0	0.00	20
Office of the Federal Inspector, Alaska Natural Gas Pipeline	3	0	0.00	21
Harry S. Truman Scholarship Foundation	4	0	0.00	22
Japan-U.S. Friendship Commission	5	0	0.00	23
Board for International Broadcasting	8	0	0.00	24
Marine Mammal Commission	8	0	0.00	25
National Commission on Library and Information Science	9	0	0.00	26
Advisory Commission on Intergovernmental Relations	19	0	0.00	27
Administrative Conference of the U.S.	20	0	0.00	28
Pennsylvania Avenue Development Corporation	29	0	0.00	29
American Battle Monuments Commission	48	0	0.00	30
Navajo & Hopi Indian Relocation Commission	53	0	0.00	31
Inter-American Foundation	76	0	0.00	32
Overseas Private Investment Corporation	130	0	0.00	33
Federal Election Commission	215	0	0.00	34
Selective Service Commission	249	0	0.00	35

Source: U.S. Equal Employment Opportunity Commission, *Annual Report on the Employment of Minorities, Women & Individuals with Handicaps in the Federal Government Fiscal Year 1986* (Washington, DC: EEOC, 1987), pp. 200-201.

that the percentage of their employees with targeted disabilities exceeded the governmentwide figure of 1.05 percent. Four agencies—the National Archives and Records Administration, Department of Education, Equal Employment Opportunity Commission, and Defense USUHS—exceeded 2 percent of employees with targeted disabilities. Thirty-nine agencies fell below the governmentwide figure. Table 6-3 presents the same type of data for federal agencies with fewer than 500 employees. Here, 15 agencies (43 percent) exceeded the governmentwide percentage and 20 fell below.

The federal agency most directly involved with public sector employment, the Office of Personnel Management, employed more than the governmentwide average percentage of persons with targeted disabilities. The Executive Office of the President ranked 60th out of 62 in terms of the percentage of its employees with targeted disabilities.

The data gathered and reported by EEOC sheds some light on the proposition that agency size and resources may be correlated with compliance. It has been postulated that larger agencies may have more resources and greater flexibility when it comes to pur-

suing regulatory mandates. The data presented in Table 6-3 show that the federal agencies with the highest proportion of employees with targeted disabilities all have fewer than 30 employees: the National Council on the Handicapped, the Committee for Purchase from the Blind and Other Severely Handicapped, and the Architectural and Transportation Barriers Compliance Board. On the other hand, 16 of the agencies with fewer than 500 employees reported that none of their employees had a targeted disability.

Occupational Status of Federal Workers with Disabilities

Not only are persons with mental and physical disabilities underrepresented in the federal work force generally, they also hold a relatively higher proportion of lower level jobs. Table 6-4 presents information from the U.S. Office of Personnel Management on the occupational categories of disabled workers, and those with targeted disabilities, in the federal work force.[5] The data in this table show that workers with disabilities are more heavily represented in technical and clerical positions and less well represented in professional and administrative categories.

Table 6-4
Federal Civilian Employment Distribution, by Handicapped Status within Occupational Categories, 1986

Occupational Category	Percent Disabled	Percent Targeted Disability
All Employees	4.52	.74
White Collar (Total)	3.77	.61
Professional	3.75	.48
Administrative	4.65	.55
Technical	4.55	.76
Clerical	2.24	.71
Other	3.43	.27
Blue Collar Total	7.58	1.26

Source: Office of Work Force Information, U.S. Office of Personnel Management, *Federal Civilian Work Force Statistics: Affirmative Employment Statistics*, September 30, 1986 (Report PSOG-86-71), Table 6, p. 176.

EMPLOYMENT OF PERSONS WITH DISABILITIES IN STATE GOVERNMENT: THE EVIDENCE

In order to assess the employment of persons with disabilities in state government, members of the ACIR project team made telephone contact with representatives of each state government to obtain relevant employment data.[6] The fundamental conclusion reached from these conversations with state officials was that *most states do not regularly collect or publish data on the employment of persons with disabilities.* While many states are able to provide data on employment of women and minorities, they do not have a regular process for gathering such data on disabled workers.

Several explanations were given for not collecting these data. Some state officials said it is felt that such workers would be uncomfortable supplying information about their handicap. Given long-standing job discrimination on the basis of handicap, respondents said that workers might fear the consequences of signaling their handicap. A few states noted the difficulties of developing workable definitions of "handicapped worker." Probably the most common comment was simply that the state had never initiated a process for regularly collecting such data. There is no specific requirement under federal laws or regulations that such data be collected and reported. In some of the states, officials noted that there is a movement under way to create data collection systems to track the employment of individuals with disabilities in the state work force.

Because so little information is collected by state governments, it is difficult to undertake a comparative assessment of federal and state actions to employ persons with disabilities. A few states did, however, report data that provide a limited picture of public employment of disabled citizens by state agency, as described below.

Illinois: The Illinois Department of Central Management Services, in its fiscal year 1987 report, presented data which shows that 3.1 percent of persons hired in state government offices were disabled.[7] According to this report, persons who experience blindness, deafness, or orthopedic difficulties were appointed more often than persons with other forms of disabilities. The same report also presented data on promotions. In this regard, 5.2 percent of persons in Illinois state government receiving promotions had some form of mental or physical disability.[8]

Minnesota: Each year the Minnesota Department of Employee Relations publishes an affirmative action report that contains data on the employment of disabled workers in state agencies. As of January 1987, 6.97 percent of about 31,000 state employees were classified as handicapped.[9] Among state agencies, representation of handicapped workers was greatest in the departments of Agriculture, Corrections, Finance, Jobs and Training, Labor and Industry, Public Service, Transportation, and Zoological

Gardens. Representation was least in Energy and Economic Development, Employee Relations, Military Affairs, and Public Safety.

Tennessee: Data supplied by the Tennessee Department of Human Services show that 476 or 1.3 percent of state employees have serious handicaps.[10] The Departments of Mental Health, Employment Security, and Conservation had the highest number of employees with handicaps.

Texas: As of January 31, 1988, the Texas Employment Commission reported that it employed 536 individuals with handicaps, representing about 12 percent of its work force.[11] These employees worked most frequently in the middle ranks of the "professional" labor category. The commission also reported that in the previous six months, it had hired 11 new employees with handicaps, again most often for middle level positions.

Washington: In March 1986, the Washington legislature appointed a Joint Select Committee on Disability Employment and Economic Participation. This committee conducted a survey of state and local government employers about the levels of full-time employment of persons with disabilities. Thirty-five percent of the state and local governments that responded to the survey reported that none of their employees were disabled. About half of the respondents said that they employed one or two disabled people, while 17 percent said they employed three or more individuals with handicaps. For part-time employees, the employment figures were even lower: over 75 percent of state and local respondents stated that none of their part-time employees were handicapped.

IMPLEMENTATION EXPERIENCES IN THE FEDERAL GOVERNMENT

Data from multiple sources have been gathered by this study to examine implementation practices regarding section 501. First, information was gathered from reports and files of the EEOC concerning reviews that have been conducted in the central headquarters and field installations of federal agencies. Second, telephone interviews were conducted by ACIR project staff with the officials in 31 federal agencies who are directly involved in programs related to the employment of individuals with disabilities. Third, telephone and in-person interviews were conducted with representatives of national organizations that represent and act as advocates for persons with disabilities. The information gathered from these sources documents current issues and dilemmas associated with implementation of equal employment opportunities in the federal government work force.

EEOC Headquarters Program Review

Since 1985, the EEOC Office of Federal Sector Programs has conducted a series of Headquarters Program Reviews of major federal agencies with regard to implementation of section 501 of the *Rehabilitation Act of 1973*. Among the agencies scrutinized were the departments of Education, Energy, Justice, State, and Transportation, as well as the Securities and Exchange Commission and the Environmental Protection Agency.[12] As part of these reviews, agency programs to implement section 501 were thoroughly scrutinized, including an examination of internal procedures and practices. The findings of these headquarters reviews provide useful information regarding influences on the implementation of employment protection programs for persons with disabilities.

Many useful activities have been reported to implement section 501. Many agencies were praised for hard work and innovative practices, particularly those that employed more than the governmentwide average percentage of persons with disabilities. At the same time that praise was given, shortfalls and implementation problems were identified, along with factors that can enhance or impede implementation of the section 501 mandate. These factors include the commitment of top agency leaders to equal employment opportunities for persons with disabilities, time spent by designated handicapped-program managers on section 501 responsibilities, fragmentation of program structures and responsibilities, the extent of program guidance provided, and the linkage of the actions of handicapped-program managers in implementing section 501 to their performance assessment.

Commitment of Agency Leadership. In some agencies, EEOC was able to document the support of top officials, including secretaries and commissioners, for employing persons with disabilities. This support was identified as a positive influence on implementation of the section 501 mandate. In at least two cases, EEOC was unable to document the support of top leadership, and recommended that they go on record clearly as supporting the mandate.

Time Commitment of Handicapped-Program Managers. EEOC outlines its instructions for agencies to follow in implementing section 501 in a management directive.[13] Included in this directive is a statement that each agency with 3,000 or more employees should have a full-time handicapped-program manager at headquarters and in each organizational unit and field installation with 3,000 or more employees. In all of the reviews conducted by EEOC, none of the handicapped-program managers devoted full time to implementation of section 501. In some cases, less than 25 percent of that individual's time was committed to the handicapped employment pro-

gram. EEOC concluded that greater time commitment by designated program managers would enhance employment of persons with disabilities.

Fragmentation of Program Implementation. Another common problem identified in the headquarters reviews involved various forms of fragmentation in program structures and operations. In some agencies, program personnel had no centralized place within the agency to obtain assistance or specialized information. In other agencies, the fragmentation problem manifested itself in multiple offices having implementation responsibility but with no central coordinating mechanism.

Insufficient Program Guidance. Lack of adequate program guidance was identified as a significant problem in at least three of the agencies studied by EEOC. In these instances, EEOC's management directive had either not been sufficiently integrated into agency rules and procedures or such procedures had not been consistently communicated to field installations. In many agencies, procedures and practices were based more on informal communication than on formal training or agency documents. Insufficient program guidance on implementation of section 501 was seen as a negative influence on the effectiveness of equal employment opportunity programs.

Linking Performance to Accountability. In its study of the headquarters operations of several federal agencies, EEOC found that the persons responsible for implementing section 501 usually were not held formally accountable for their actions in employing persons with disabilities. EEOC field teams studied the job descriptions of handicapped-program managers and seldom found a clear specification of responsibilities for implementing section 501. EEOC consistently recommended that position descriptions be amended to include section 501 responsibilities, with the expectation that this action will enhance efforts to assess performance in employing persons with disabilities in the future.

Making Reasonable Accommodations. In most agencies, EEOC found that many forms of reasonable accommodation were being regularly instituted to enhance the job opportunities of disabled workers. Often, however, EEOC found that such accommodations were done through informal processes, leaving concerns about consistency. Many agencies have been encouraged to regularize the process by which reasonable accommodations are requested by workers and made by the agency. In two cases, EEOC found agencies to be inefficient in making reasonable accommodations to employ persons with disabilities. In general, slow agency reaction to requests for reasonable accommodation appeared to be based more on neglect in creating an appropriate process than on firm resistance to the concept. Given the centrality of reasonable accommodation measures to effective equal employment opportunity programs, however, inefficiency in this area may negatively influence the consistent implementation of section 501.

Handicapped Employees Advisory Committees. EEOC's management directive regarding affirmative action for employment of individuals with handicaps stipulates that federal agencies should establish Handicapped Employees Advisory Committees to provide input concerning disability issues and employment practices.[14] Membership on such committees is to be constituted of handicapped workers in addition to managers, union representatives, and others. The reviews of headquarters operations frequently found that such committees had either ceased to function or were in need of revitalization.

Overview: Headquarters Program Reviews. These reviews provide many kinds of insights into the implementation of section 501 within the federal government. The reviews indicate that all agencies have mechanisms in place to undertake affirmative action to employ individuals with disabilities. Several agencies were praised for their innovative approaches and strategies.

However, problems were also encountered.

Among them were needs for greater clarification and documentation of procedures to guide implementation in most agencies. It was found frequently that handicapped-program managers spent insufficient time on employment programs and that such persons seldom had position descriptions that included reference to their section 501 responsibilities. Consistently, the central offices were encouraged to provide greater guidance and direction on policy execution, see that handicapped program managers devote greater time to employment matters, and assess the performance of such managers.

Other identified shortfalls were more agency specific. In some agencies, the support of top leaders for employment of persons with disabilities could not be documented. In others, the process for providing reasonable accommodations was found to be inadequately designed and implemented. Also, fragmentation of responsibility for implementation was found in some of the agencies reviewed by EEOC.

EEOC's Review of Field Programs

In addition to reviewing agency headquarters operations, EEOC regularly conducts on-site reviews of federal agency field installations. The selection of locations to review is made each year by the EEOC's Director of Public Sector Programs. According to EEOC policy, these selections are made on several bases, including agency size, anticipated employment opportunities, successful agencywide goal achievement, failure of an agency to achieve goals, congressional intent, recency of prior reviews, a high incidence of equal employment opportunity complaints, and other factors.

Table 6-5

Findings from EEOC's On-Site Reviews of Federal Installations concerning Implementation of Section 501

This table presents data gathered from on-site reviews of federal agency installations for fiscal years 1984 through 1986.

	Fiscal Year		
	1984	1985	1986
Number of Installations Examined	162	227	173
Program Management			
Handicap-Program Manager Designated at Installation	86%	93%	93%
Amount of Time Most Managers Spent on Employment Programs for Disabled Persons	15%	10%	10%
Handicap-Program Managers Received Adequate Training for Handicap Employment program	29%	18%	14%
Special Recruitment Programs			
Installation Had Established Clear Hiring Goals	27%	35%	55%
Applicant Pools of Individuals with Disabilities Established	50%	52%	43%
Installation Created System to Track Applications from Individuals with Handicaps	20%	25%	34%

Source: U.S. Equal Employment Opportunity Commission, *Annual Report on the Employment of Minorities, Women & Individuals with Handicaps in the Federal Government, Fiscal Years 1984-1986.* Sections on On-Site Program Reviews (Washington, DC: EEOC, 1987).

From fiscal year 1983 through 1986, EEOC's regional offices conducted more than 770 on-site program reviews relevant to implementation of section 501.[15] Program reviews of field installations have focused on four general areas: program management, special recruitment program, data collection, and facility accessibility.

Program Management. EEOC reviews of program management at agency field installations found that most had a handicapped-program manager (see Table 6-5).[16] These managers tended to spend a small proportion of their time on the section 501 program, many lacked adequate training or experience, and a large percentage did not have their handicapped-program responsibilities included in their job description. This last finding parallels that for handicapped-program managers at the headquarters level.

Special Recruitment Programs. When assessing special recruitment programs, EEOC staff examined hiring goals, recruitment plans, and the existence of applicant pools of persons with disabilities. Findings on these points are presented in Table 6-5. Field installations were more likely, on the whole, to have established applicant pools than to have delineated clear hiring goals or created a system to track the job applications of persons with disabilities.

Data Collection at Installations. In each year evaluated, EEOC reviewers found that most of the installations regularly asked new employees to complete Standard Form 256 (or an equivalent) through which workers can indicate a disabling condition. It was found, however, that in about a quarter of the installations reviewed each year, handicapped employees failed to code themselves accurately on this form. In response to this finding, EEOC urged the personnel specialists at the installations to communicate the purpose and importance of disability reporting and the confidential and restricted handling of this information.

Facility Accessibility. A significant factor affecting the ability of field installations to hire persons with disabilities is accessibility. In a given year, from a third to over half of the installations examined by EEOC staff were found to be basically or fully accessible to persons with physical disabilities.[17] The installations with the worst accessibility ratings tended to be older buildings, sometimes historic ones, where accessibility modifications are difficult or have been waived. The on-site reviews also indicated that many existing physical barriers had either been or were in the process of being removed.

Overview of On-Site Reviews of Federal Installations. The EEOC on-site reviews have documented that most installations have created a basic process for implementing section 501. Data on disability are being collected, handicapped-program managers are in place, applicant pools are being created, and barriers are coming down. Simultaneously, however, it is clear that implementation practices have not reached an optimal state. For an effective 501 program, many handicapped program managers need additional training, more architectural barriers must be removed, and better tracking systems for monitoring handicapped job applicants need to be created.

Evidence from a Study of 13 Federal Agencies

Another source of information on the implementation of the section 501 mandate by federal agencies is a study of the affirmative action programs of 13 large agencies conducted in the mid-1980s by a doctoral student.[18] Among the data gathering strategies used in this study was an open-ended interview

with officials who oversee implementation of handicapped employment programs.

One set of implementation difficulties results, according to this study, from broader social and economic forces. For example, the study found negative attitudes to be a persistent impediment to implementation of section 501. Work force cutbacks, resulting from funding constraints, also reduced opportunities for new employment.

Like the findings reported by the EEOC in its annual reports, this study found several deficiencies in agency recruitment programs. Interviews with officials indicated, for example, that many agencies have processes that are passive and reactive rather than affirmative. Some agencies had not established job applicant pools or special systems for tracking applications from persons with disabilities.

Enforcement mechanisms were also examined. The study found that agencies lack sanctions and strong incentives to motivate compliance with the section 501 mandate, and agencies' headquarters have not established internal reporting systems through which to assess the performance of subordinate units. Inaccurate data collection was identified as another factor impeding enforcement.

Finally, on administrative resources and practices, many units within agencies were found to be unfamiliar with their section 501 responsibilities; here, insufficient communication within the agency was identified as the culprit. Similar to EEOC findings, this study concluded that many officials responsible for implementing section 501 devote a relatively small portion of their work time to this function.

The View of Handicapped-Program Managers

ACIR's project staff conducted telephone interviews with managers of handicapped employment programs in 31 federal agencies of all sizes, from the smallest commissions to the largest cabinet departments.

In an open-ended format, these managers were asked to identify current issues and problems associated with the execution of section 501 programs. They were asked to identify specific obstacles they experienced in carrying out the mandate.[19] They were also queried about reasonable accommodation, specifically about actions taken and the costs of making such accommodations.

Overall, these program managers tended to report favorable assessments of the implementation of handicapped employment programs. As compared to earlier years, current implementation practices have become more routinized, and policy directions are clearer. Many of those interviewed reported that awareness was slowly growing in their agency about the realities and advantages of hiring persons with disabilities.

The Crucial Position of Supervisors. One of the most striking findings of these interviews concerned the pivotal position that supervisors and middle-level managers now play in efforts to enhance the public sector employment opportunities of persons with disabilities. In 18 of the 31 interviews, respondents pointed to the actions of middle level supervisors—those who make individual hiring decisions—as the current focal point of efforts to implement section 501. Many of the program managers noted problems with at least some of their middle level managers. One of those interviewed for the study went so far as to argue that if managers did not push, "then the handicapped would not have a chance to be hired."

Most frequently, problems with supervisors were attributed to misconceptions and negative attitudes. One misconception, articulated in several ways, was a concern about the ability of the handicapped worker to handle the job. Some supervisors doubted the capabilities of handicapped persons and felt, despite requirements that handicapped workers be "otherwise qualified" to perform job tasks, that these workers will be less than fully qualified, slow to learn job responsibilities, and difficult to remove if they perform unsatisfactorily. Such attitudes appear far more prevalent where there is no handicapped worker already at the job site. Once a disabled worker is placed, his or her presence works to dissipate the concerns and misconceptions of supervisors and coworkers.

It should be emphasized that the negative attitudes of middle management in the federal public sector is rooted more in misconception, based on infrequent contact, than in animosity toward people with disabilities. The disabled worker is viewed by some supervisors as an unknown quantity, a risk; as such, the recruitment and hiring of persons with disabilities may not always be pursued diligently. Several program managers suggested that the solution to this problem is to provide greater education to supervisors on the employment capacities of persons with disabilities and the relatively easy methods through which most workers can be accommodated in the work place. The major obstacle to implementing this education strategy, according to several of those interviewed, is the lack of resources and personnel.

Funding and Implementation. The second striking finding of these interviews concerned the costs of providing accommodations to persons with disabilities in the work place. Often the specter of high-cost accommodations has dampened interest. This specter has remained powerful despite studies which show that workers with disabilities are strong performers and that reasonable accommodations are generally easy to implement and inexpensive.

According to most of the handicapped-program managers interviewed for this study, *the costs of pro-*

viding accommodations to persons with disabilities in the work force do not generally impose significant obstacles to implementation of section 501. Most of the managers recounted examples of accommodations that included the restructuring of job tasks, rearrangement of office settings, provision of readers or interpreters, installation of TDD machines, and removal of architectural barriers. The handicapped-program manager in one of the defense agencies estimated that reasonable accommodations in the work place could usually be made for a one-time cost of under $100.

The only form of accommodation that generated what were viewed as significant costs was the provision of interpreters or sign language personnel. Yet, even in this context, most agencies reported that they had been able to provide these accommodations to persons with hearing impairments.

In some cases, agencies sought ways to utilize agency resources more effectively to cope with expensive accommodations. The representative of one large domestic agency described how her agency has developed a support services pool for persons with disabilities; included in the pool are interpreters, sign readers, and others. This pool can be used by any unit within the larger agency. In this way, the costs of performing reasonable accommodations are borne by the agency as a whole, not by the individual unit. This development appears to be a fruitful means of coping with those situations where reasonable accommodation entails the provision of relatively expensive equipment or personnel.

Despite the important findings that reasonable accommodations can typically be made at a low cost and that agencies are devising means to cope with those that are expensive, *the perception that reasonable accommodation is costly remains, particularly in the middle management level of federal agencies where hiring disabled workers is a new experience.* Here, it remains the task of the program manager to assess accommodation measures and costs, and then to educate supervisors on accurate cost assessments. Respondents indicated that concerns about accommodation costs tend to diminish markedly after the first one or two are made. Once again, education appears to be the most effective means to combat misconceptions.

Leadership. More than a quarter of the handicapped-program managers interviewed for this study identified the support of agency leadership as an important factor that has enhanced implementation of the equal employment opportunity mandate. Such support is seen as signaling to the entire agency that the employment of handicapped persons is viewed as a key priority. One respondent noted that the head of the agency had been personally involved in the program and that this had been a major factor enhancing implementation. In at least one case, support from top administrators was also seen as enhancing the resources made available for implementation of section 501.

Problems in Locating Qualified Handicapped Applicants

Handicapped-program managers reported difficulties in locating handicapped persons with appropriate job skills, especially for professional or specialized positions, including doctors, dentists, accountants, and many others. Given that handicapped citizens have often faced discrimination in education, it is likely that qualified handicapped persons are underrepresented in professional job classifications. At the same time, it is possible that problems in locating qualified handicapped workers result from insufficient recruitment efforts.

Three agency representatives pointed to funding problems as one reason why they were limited in their ability to undertake effective recruitment efforts. These individuals reported that they had other responsibilities and thus were unable to engage in all possible recruitment activities to locate and attract qualified handicapped workers. One respondent noted that a new recruitment position, long overdue, was recently created by his agency; he expressed hope that recruitment efforts would be expanded.

Agency Mission. Two agencies that operate multiple programs to serve persons with mental and physical disabilities noted that the nature of their mission aided implementation of section 501. Because these agencies deal regularly with individuals who have handicapping conditions, there exists greater awareness of the needs and potential of these persons. This awareness, in turn, translates into a greater willingness to seek out and encourage employment of persons with disabilities. One of the managers interviewed indicated that because her agency is charged with enhancing the health of American citizens, it seeks to serve as a model in employing persons with disabilities.

Mental Disabilities and Employment. The interviewed federal program managers offered several insights into issues related to the employment of individuals with mental disabilities. One respondent stated that persons with mental disabilities often do not identify themselves to supervisors, making it difficult to provide employment-related assistance to them. Seeing this differently, another respondent noted that because persons with mental disabilities are less likely to make their condition known, they have fewer problems being accepted into the work place. The assessment of those respondents who discussed mental disability was that in many cases there are tensions when the first individual with a mental disability enters a work division. After some extra training, on both sides, however, the tensions tend to diminish.

The View of National Advocacy Groups

Another data collection strategy utilized by this study was telephone interviews with [illegible]

be effective in hiring and promoting larger numbers of individuals with disabilities.

Inadequate Resources and Personnel. Such ad-

Table 6-6

Assessment of Federal and State Efforts to Employ Persons with Disabilities: View from the States

Rating Category	Percentage of Respondents Rating Efforts to Employ Persons with Disabilities, by Rating Category: Assessment of State Government Representatives (N = 150) State	Assessment of State Government Representatives (N = 150) Federal	Assessment of State-Level Advocacy Groups (N = 142) State	Assessment of State-Level Advocacy Groups (N = 142) Federal
1.Very Effective	3.3%	0.0%	1.4%	2.1%
2.	13.3%	14.0%	0.0%	13.4%
3.	28.7%	23.3%	20.4%	26.8%
4.	24.7%	17.3%	30.3%	18.3%
5. Not Very Effective	23.3%	14.7%	30.3%	16.9%
6. Don't Know/No Response	6.7%	30.7%	10.6%	22.5%
Mean Response*	3.55	3.47	3.91	3.45

*Because the variable was coded on the mail survey with a value of 1 for "very effective" through 5 "not very effective," the lower the mean score, the higher the effectiveness.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October 1988.

not all forms of discrimination receive equal attention inside and outside of government. They argued that when thinking about discrimination, federal agencies are apt to be more aware of and concerned about discrimination based on race or sex. In comparison, discrimination against persons with disabilities is less visible and understood, and thus tends to receive less attention in some agencies.

Clarity and Specificity in Employment Protection Policies. One advocacy group representative discussed in some detail his view that the inadequate specification of implementation practices in existing law and regulations explains, in large measure, variations across agencies in hiring persons with disabilities. He argued for greater specificity of actions required of agencies to comply with the section 501 mandate.

IMPLEMENTATION EXPERIENCES IN STATE GOVERNMENT

To assess the practices of state governments in hiring persons with disabilities, ACIR conducted a mail survey of two sets of state respondents. One was comprised of officials in state agencies concerned with disability policy and services, including departments of vocational rehabilitation, personnel or labor offices, and governor's commissions to employ the handicapped.[21] These individuals were identified through telephone searches, and surveys were mailed to approximately 300 officials throughout the 50 states.

The second set of respondents included representatives of state-level advocacy groups. These organizations were identified from publications dealing with disability rights and from the national offices of disability advocacy organizations. Surveys were sent to more than 375 of these state organizations. The rationale and methodology of this survey, as well as a copy of the questionnaire, are included in Appendix C.

Assessments of Federal and State Efforts to Employ Persons with Disabilities

The representatives of state agencies and state advocacy groups were asked to assess the effectiveness of the federal government and their state government in recruiting and hiring persons with disabilities. Respondents rated the relative effectiveness of the federal and state governments on a 5-point scale, where a score of 1 reflected a "very effective" rating and 5 a "not very effective" rating (see Table 6-6).

Both groups of respondents gave both their state government and the federal government relatively low ratings. Very few respondents rated the performance of either government in hiring persons with disabilities as "very effective." About 25 percent of the state officials and 30 percent of the advocacy group representatives rated the performance of their own state government as "not very effective."

Assessment of Federal and State Efforts to Make Reasonable Accommodations in the Work Place

The two groups of respondents were also asked to assess the effectiveness of the federal government and their state government in making reasonable accommodations in the work place. Their responses are

Table 6-7

Assessment of Federal and State Efforts to Provide Reasonable Accommodations in the Work Place: View from the States

	Percentage of Respondents Rating Efforts to Employ Persons with Disabilities, by Rating Category			
	Assessment of State Government Representatives (N = 150)		Assessment of State-Level Advocacy Groups (N = 142)	
Rating Category	**State**	**Federal**	**State**	**Federal**
1. Very Effective	8.7%	2.7%	0.7%	2.1%
2.	20.7%	14.0%	19.0%	19.0%
3.	32.0%	26.0%	26.8%	23.9%
4.	19.3%	15.3%	26.8%	19.7%
5. Not Very Effective	14.7%	10.0%	16.9%	11.3%
6. Don't Know/No Response	4.7%	32.0%	9.9%	23.9%
Mean Response*	3.11	3.24	3.45	3.25

*Because the variable was coded on the mail survey with a value of 1 for "very effective" through 5 "not very effective," the lower the mean score, the higher the effectiveness.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October 1988.

reported in Table 6-7. The pattern here is much the same as for recruiting and hiring persons with disabilities (Table 6-6). Both groups gave more negative ratings than positive ones to both governments. State officials tended to assess the reasonable accommodation efforts of state governments more favorably than did advocacy group representatives.

Intergovernmental Issues

Questions in the mail survey focused directly on intergovernmental issues. One question asked respondents to assess the level of funding provided to state and local governments by the federal government to assist in implementing the federal mandate to employ persons with disabilities. Table 6-8 provides data on their responses.

The data reported in Table 6-8 provide strong evidence that both advocates and state public officials consider the level of federal funding of its mandate less than adequate. Forty-three percent of the state officials and 49 percent of the advocacy group representatives judged federal funding for the employment mandate to be less than enough. Only 13 percent of state officials and 8 percent of advocacy representatives rated federal funding as more than or about enough.

Another question asked respondents to compare the commitment of the state government and the federal government to implementing the federal mandate to employ persons with disabilities (Table 6-9). On this question, a very divergent pattern of responses emerges among the two sets of respondents. Sixty-one percent of the state officials rated their state as more committed or as equally committed as the federal government, while only 41 percent of the advocacy group representatives gave this assessment. Nearly half (47 percent) of the advocacy respondents said that their state government was less committed than the federal government to implementing the federal mandate.

Table 6-8

Assessment of Federal Funding of Mandate to Employ Persons with Disabilities: View from the States

	Assessment of State Government Representatives (N = 150)	Assessment of State-Level Advocacy Groups (N = 142)
Rating of Federal Aid		
1. More than Enough	0.0%	0.7%
2. About Enough	12.7	7.7
3. Less than Enough	43.3	48.6
4. Hardly Any	9.3	12.7
5. None at All	4.7	3.5
6. Don't Know	30.0	26.8
Mean Response*	3.09	3.14

*Because the variable was coded on the mail survey with a value of 1 for "more than enough" through 5 for "none at all," the lower the mean score, the higher the rating of federal funding of the mandate.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October 1988.

Table 6-9

Comparison of Federal and State Commitment to Implementing Federal Mandate to Employ Persons with Disabilities: View from the States

	Assessment of State Government Representatives (N = 150)	Assessment of State-Level Advocacy Groups (N = 142)
Compared to the Federal Government, State Commitment to Mandate to Employ Persons with Disabilities		
1. State More Committed	21.3%	9.9%
2. State Equally Committed	40.0	31.0
3. State Less Committed	24.0	47.2
4. Don't Know	14.0	11.3
Mean Response*	2.05	2.45

*Because the variable was coded on the mail survey with a value of 1 for "more committed than federal government" and 3 for "less committed than the federal government," the lower the mean score, the higher the perceived commitment of the state as compared to the federal government.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October, 1988.

In sum, then, both state public officials and state advocacy group representatives tend to see the federal government as slightly more effective than their state government in recruiting and hiring persons with disabilities and in making reasonable accommodations in the work place. Both groups overwhelmingly rate federal funding as insufficient for implementing the federal mandate. Advocates and state officials vary significantly in their evaluation of their state's and the national government's commitment to implementing the mandate. State officials tend to see their government as being equally or more committed than the federal government, whereas the advocacy group representatives assess the federal commitment as greater.

Impediments to State Government Actions to Employ Persons with Disabilities

Perceived impediments to the efforts of state governments to comply with federal and state mandates to employ persons with disabilities was explored in another series of ACIR questions. Respondents were asked to rate factors as weak, moderate, or strong impediments, or no impediment at all. Findings are reported in Table 6-10; Table 6-11 is a summary table that ranks the factors representing serious impediments to implementation of the federal mandate.

Overall, both groups of respondents rated most of the factors as major impediments to employing

Table 6-10

Assessment of Impediments to Employment of Persons with Disabilities in State Government: View from the States

	Percentage of Respondents Identifying Impact of Impediment by Type and Seriousness of Impediment*							
	Assessment of State Government Representatives (N = 150)				Assessment of State-Level Advocacy Groups (N = 142)			
Magnitude of Impact:	**None**	**Weak**	**Moderate**	**Strong**	**None**	**Weak**	**Moderate**	**Strong**
Factor:								
1. Negative Attitudes/Misconceptions	2.0%	10.7%	48.0%	34.7%	2.1%	9.9%	37.3%	47.9%
2. Insufficient Recruiting	2.7	9.3	37.3	45.3	1.4	7.7	40.1	46.5
3. Concerns about Accommodation Costs	4.0	16.7	40.0	35.3	2.8	14.1	30.3	47.9
4. Insufficient Funds for Accommodations	6.7	21.3	38.7	29.3	5.6	17.6	40.1	31.7
5. Responsibility for Enforcement Divided among Agencies	10.7	20.0	36.0	27.3	3.5	13.4	50.0	26.8
6. Lack of Leadership Support/ Commitment	8.7	17.3	32.0	36.0	3.5	12.0	33.1	45.8
7. Other Policy Issues More Important in State	7.3	14.0	29.3	42.7	4.9	8.5	26.1	56.3

*"Don't Know" responses are not listed in this table.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October 1988.

Table 6-11

Rank Ordering of "Serious Impediment" Factors Identified by State Officials and Advocacy Group Representatives

State Officials	Advocacy Groups
1. Insufficient Recruiting (45%)	1. Other Policy Issues More Important in State (56%)
2. Other Policy Issues More Important in State (43%)	2. Concerns about Accommodation Costs (48%)
3. Lack of Leadership Support/Commitment (36%)	3. Negative Attitudes (48%)
4. Concerns about Accommodation Costs (35%)	4. Insufficient Recruiting (47%)
5. Negative Attitudes (35%)	5. Lack of Leadership Support/Commitment (46%)
6. Insufficient Funds for Accommodations (29%)	6. Insufficient Funds for Accommodations (32%)
7. Divided Responsibility for Enforcement (27%)	7. Divided Responsibility for Enforcement (27%)

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October 1988.

persons with disabilities in state government. As displayed in Table 6-11, state officials identified insufficient recruiting most frequently (45) as a serious problem confronting implementation, followed by: other policy issues being more important (43), lack of leadership support and commitment (36), employer concerns about accommodation costs (35), negative attitudes about persons with disabilities (35), insufficient state funds for accommodations (29), and division of enforcement responsibility among state agencies (27).

The representatives of state advocacy groups presented a different ordering of factors. The advocates rated the prominence of other policy issues as the most serious obstacle to implementation (56), followed by: employer concerns about accommodation costs (48), negative attitudes about disabled persons (48), insufficient recruiting efforts (47), lack of leadership support and commitment (46), insufficient funds for accommodation (32), and division of enforcement responsibility (27).

Other Influences on Compliance: Open-Ended Responses

Two open-ended questions were included in ACIR's mail survey. In one question, respondents were asked to identify factors that make state compliance with the employment mandate difficult; in the other, they were requested to note factors that facilitate and enhance implementation. In both cases, respondents were told that they could elaborate on previous answers in the survey or discuss other factors they perceived as having a significant impact on regulatory compliance. About 90 percent of respondents recorded some remarks in the open-ended section.

Common Themes. State advocates and public officials expressed common themes in their open-ended remarks. Both reiterated the significant and often negative impact of public and employer attitudes toward persons with disabilities. Such attitudes have multiple dimensions, including feelings of discomfort in associating with disabled individuals, inaccurate assessments of their productivity, and concerns about the costs that might be associated with work place accommodations.

Both groups expressed strong distress at the prominence of these attitudes and the difficulty in changing them. Negative attitudes persist, despite evidence that handicapped workers are productive, countless experiences with persons with disabilities who have made successful adjustments to work settings, and studies showing that most work place accommodations involve little cost. The most frequently mentioned solutions to this problem were education programs and initiatives that use facts to dispel stereotypes and misconceptions. Many respondents suggested targeting these educational campaigns to the middle management level where most employment decisions are made.

Other impediments identified by both groups were lack of adequate public and private transportation systems; persistent communication barriers; other policies receiving higher priority in state government; provisions of health insurance plans that make coverage for persons with disabilities difficult; and the failure of long-standing personnel systems to create and implement specialized procedures relevant to individuals with disabilities.

Special Concerns of Advocacy Groups: Insufficient Enforcement and Accommodation Costs. Respondents who represented state advocacy groups were more likely than state public officials to express concerns about the inadequate enforcement of equal employment opportunity mandates. Some complained that little is done to monitor employment practices in state agencies. Others felt that enforcement problems are rooted in the lack of incentives and sanctions. They saw little evidence that state agencies are either accurately scrutinized or sanctioned for poor performance regarding employment

practices related to persons with disabilities. More than one advocacy representative called for the creation of a state watchdog agency empowered to oversee implementation practices across state agencies.

Many advocacy group representatives also reiterated that a perception of high accommodation costs can work against regulatory compliance. Many respondents noted that the devices and services used to overcome communications barriers can be costly, particularly if they are absorbed by the individual work unit instead of by the agency as a whole. Several respondents noted examples of state agencies that are not accessible by persons with disabilities who use TDD devices. From their perspective, cost limitations sometimes represent real difficulties for agencies that may wish to supply assistive devices. In other cases, respondents argue that cost issues are more an excuse for inaction than a real constraint.

Constraints Faced in Implementing Regulatory Mandates: The View of State Public Officials. While many advocates expressed concerns about enforcement, state public officials pointed to a variety of economic and political constraints that negatively affect implementation. Several respondents noted that weakness in their state's economy caused cutbacks in both state government expenditures and employees. In this climate of austerity, where there are fewer job opportunities and fewer dollars spent on personnel functions and training programs, it is difficult, they say, to move forward with great achievements related to regulatory mandates. Most argued that increasing the representation of persons with disabilities in their work force would be far easier in a situation of public sector growth. Cutbacks in federal funding have also not been helpful. The state officials did not argue that these constraints justify poor performance; they simply indicated that broader economic and political forces make compliance with the employment mandate more difficult.

The Washington State Case: Another View of State Regulatory Compliance

Another perspective on state employment of persons with disabilities is afforded by a report compiled by the State of Washington's Joint Select Committee on Disability Employment and Economic Participation. As described earlier in this chapter, the select committee conducted a survey of state and local employers. Respondents were asked to list the three main factors leading to the high unemployment and low labor-force participation among people with disabilities. Responses to this survey question are summarized in Table 6-12.[22]

These data suggest that such employers are not fully informed about the general work experiences of persons with disabilities. Despite studies showing that disabled workers perform as well as other workers, the employers who responded to the Washington survey expressed concerns about the work and social skills of disabled workers, their productivity, absenteeism, and insurance risks. Some saw the cost of accommodations as one explanation for the low labor force participation of persons with disabilities.

Table 6-12
Responses of State and Local Employers, State of Washington, 1986

Reason for High Unemployment/ Low Labor Force Participation of Persons with Disability	Percent of Respondents
Lack of Prior Work Experience	24.6%
Applicants Not Properly Trained	17.8
Not Sure Where/How to Recruit	10.0
Accommodations Too Expensive/ Complex	6.6
No Financial Incentives to Hire	6.6
Lack of Transportation to Work Place	6.6
Individual Productivity Too Low	4.4
Lack of Social Skills	3.3
Loss of Public Benefits if Work	3.3
Insurance Risk	2.3
Negative Reaction from Other Workers	2.3
Inadequate Community Support	2.3
Too Much Extra Bother	1.1
Other	8.8

Source: State of Washington, Joint Select Committee on Disability Employment and Economic Participation, *Final Report to the Legislature*, 1986, Appendix C.

Other factors cited by the state and local employers are real barriers to participation in the work force. Lack of adequate transportation to the work place, inadequate community support systems, and deficient recruitment systems are common barriers that have worked to reduce the employment opportunities of persons with disabilities.

The state and local employers were also asked whether their government included disabled persons as a protected class and whether they had a policy regarding reasonable accommodations. Of those employers who responded, 53 percent said that their affirmative action programs include individuals with disabilities as a protected class. Two-thirds had policies regarding reasonable accommodations.

These state and local employers, finally, were asked whether their government, or private employers, could do anything to make it easier to increase the employment of disabled people in the public sector. Eighty percent of the respondents replied affirmatively. Among the things cited were the

following: provide financial incentives to hire persons with disabilities, improve training and education to increase the quality of applicants, better define what disability is, improve recruitment programs, do a better job of projecting state work force needs, establish some exempt positions for people with disabilities, and improve the training of personnel staff about employment of disabled individuals.

FEDERAL AND STATE EXPERIENCES CONTRASTED

The data presented in this chapter do not allow precise comparison of the performance of state and federal governments in employing persons with disabilities. As compared to most states, the federal government has a far better system for gathering and reporting employment data. On this count, state governments could take a lesson.

From the data that do exist, the state and federal government records in terms of employment seem roughly equivalent. Both the federal government and the few state governments that supplied data report that somewhere between 3 and 5 percent of their work force experience a disability. While one cannot draw any firm conclusion here, there is no evidence that either government is far ahead in terms of employing persons with disabilities.

There is substantial variation across federal agencies in the employment of persons with disabilities. Agencies whose missions include the provision of services to disabled citizens have a better record than other agencies in employing workers with handicaps. Support from agency leaders tends to enhance compliance with employment mandates. Some large agencies, despite substantial budgets and work forces, have weak records in hiring persons with disabilities. There is little evidence to suggest that commitment to employing workers with disabilities is consistent across federal agencies.

The last chapter thoroughly examines the factors that appear to influence the propensity of public agencies to comply with mandates to pursue equal employment opportunity for disabled persons. At this point, it is enough to note some broad themes and issues that have been identified through multiple sources of information. First, there is evidence for both federal and state governments that the current focal point for regulatory compliance is at the middle management level. This has not always been the case. During past years, the primary arena was at the top of agencies as the federal government worked to design, and often redesign, regulations and directives to guide implementation. As documented in the first chapter, ongoing policy debates took place for many years and tended to overshadow the implementation of policies.

Now that regulatory policies are in place and management directives are mostly written, the action has shifted to those who actually make hiring and promotion decisions. Generally, this is the middle level. At this level, implementation has sometimes been impeded by negative attitudes and misconceptions about persons with disabilities and their performance capabilities. These attitudes, coupled with limited resource flexibility, can have a negative impact on employment of workers with handicaps. A whole new level of educational activity is needed to inform a new set of players and dispel their misconceptions. Initiatives to enhance the resource flexibility of these managers may also yield positive payoffs with regard to effective implementation of regulatory mandates.

Second, evidence from all sources points to attitudinal problems as a significant obstacle to implementation of the mandate to advance the employment opportunities of persons with disabilities.[23] These attitudes are difficult to break. The most effective remedy seems to be the experience of hiring the first worker who has a disability. This is often a tough hurdle to overcome; yet once this person is on the job, the attitudinal barriers often melt away.

Third, the issue of costs remains and appears to be more complex than might be expected. Sometimes, reasonable accommodation does require significant sums of money, at least at the work unit level. For the supervisor, coming up with the funds to purchase an assistive device for a hearing-impaired person may be an obstacle. Yet when one looks at these costs spread across the whole agency, the costs are not generally a heavy burden. *The problem is that generally no agencywide monies are set aside, forcing supervisors to find the funds at their own level.*

In other instances, accommodation cost issues are more illusory than real obstacles to compliance. Sometimes the only real impediment is the perception of the supervisor. Unfortunately, in other cases, arguments about accommodation costs are used as a smoke screen to mask the real reasons for not hiring a person with a mental or physical disability.

Finally, the findings presented in this chapter paint a rather negative picture of the level of cooperation among state and federal agencies in pursuing mandates to enhance the employment of persons with disabilities. There is little indication that either level of government understands or appreciates what is happening at the other level. Unfortunately, there is little or no evidence of sharing information or expertise regarding implementation practices. With the exception of the preparation by the federal government of publications that have proven to be useful to state governments, there is little sharing of the realities and difficulties encountered in complying with regulatory mandates. We return to this issue and the questions of influences on regulatory compliance in the final chapter.

NOTES

[1]Leslie B. Milk, "Out of Sight, Out of Mind, Out of Work: Barriers to Employment for Handicapped People," in *Civil Rights Issues of Handicapped Americans: Public Policy Implications* (Washington, DC: U.S. Commission on Civil Rights, 1980), p. 127.

[2]For detailed information on the extent of disabilities experienced by Americans and the impact of these disabilities see: U.S. Department of Education, *Digest of Data on Persons with Disabilities* (Washington, DC: National Institute of Handicapped Research, 1984).

[3]These categories related to the codes on the federal government's Standard Form 256 (Self-Identification or Reportable Handicap Form) as follows: deafness (16 and 17), blindness (23 and 25), missing extremities (28 and 32-38), partial paralysis (64-68), complete paralysis (71-78), convulsive disorders (82), mental retardation (90), mental illness (91), and distortion of limbs and/or spine (92).

[4]U.S. Equal Employment Opportunity Commission, *Annual Report on the Employment of Minorities, Women and Individuals with Handicaps in the Federal Government: Fiscal Year 1987* (Washington, DC: EEOC, 1988).

[5]U.S. Office of Personnel Management, Office of Workforce Information, *Federal Civilian Workforce Statistics: Affirmative Employment Statistics,* September, 30, 1986 (Report OSOG-86-71), Table 6, p. 176.

[6]In each state, the project team contacted officials in state employment or personnel offices, vocational rehabilitation agencies, Governors' Commissions on the Employment of the Handicapped, and other state offices. During these telephone conversations, the purposes of the project were outlined and state officials were requested to provide employment data and other relevant information on employment of persons with disabilities in the state.

[7]Illinois Department of Central Management Services, *Report on Handicapped Employees with Promotion and Appointment Transactions Effective July 1, 1986 through June 30, 1987* (Springfield, Illinois, 1987).

[8]Ibid.

[9]Minnesota Department of Employee Relations, Equal Opportunity Division, *Affirmative Action Report 1987* (St. Paul, Minnesota, 1987).

[10]Information on employment of persons with disabilities in Tennessee state government was provided by Affirmative Action Officer in the State Department of Personnel. The letter accompanying the data suggests that the numbers provided tend to under count the number of workers with handicaps because reporting disability is voluntary.

[11]This data on employment of persons with disabilities in Texas state government was provided by the Texas Employment Commission, Austin.

[12]The Headquarters Review Programs were reported in a series of reports prepared by EEOC's Office of Federal Sector Programs. The reports were issued by EEOC as follows: Securities and Exchange Commission (September 1985), Environmental Protection Agency (December 1985), Department of Transportation (July 1986), Department of State (January 1987), Department of Education (May 1987), Department of Energy (August 1987), Department of Justice (January 1988).

[13]At the time the data reported in this chapter were collected, fiscal years 1983 through 1986, the Equal Employment Opportunity Commission conveyed instructions for implementation of section 501 through its Management Directives MD-EEO-711A ("Affirmative Action for Hiring, Placement, and Advancement of Handicapped Individuals," issued October 1983) and MD-EEO-712 ("Comprehensive Affirmative Action Programs for Hiring, Placement, and Advancement of Handicapped Individuals," issued March 1983). These directives have since been superseded or updated through MD-EEO-713 ("Affirmative Action for Hiring, Placement, and Advancement of Individuals with Handicaps," issued October 1987).

[14]See EEOC Management Direction EEO-MD-712, Section 7d(9), which was revised through Management Directive EEO-MD-712 7d(9), October 1987.

[15]Information on the on-site program reviews of field installations of federal agencies are reported in the EEOC annual report. In addition, the ACIR project reviewed reports that EEOC sent to agency headquarters summarizing information obtained by reviews of their field installations.

[16]This information is presented in the "Employment of Individuals with Handicaps in the Federal Government" Section of EEOC's *Annual Report on the Employment of Minorities, Women & Individuals with Handicaps in the Federal Government, Fiscal Years 1984-1986.*

[17]This EEOC review of accessibility is based on a review of key features—such as physical barriers to entry and movement, accessible rest rooms—and not on a full survey based on standards set by the Architectural and Transportation Barriers Compliance Board or the standard-setting agencies.

[18]Dilcia M. Gonzalez-Gandarillas, *Implementing the Federal Government's Employment Nondiscrimination and Affirmative Action Programs under Section 501 of the Rehabilitation Act of 1973, as Amended.* Doctoral Dissertation (Washington, DC: The George Washington University, 1986).

[19]These telephone interviews with handicapped-program managers were conducted in July and September 1988. Respondents were promised, in letters they received explaining the project, that their comments would be completely confidential. For this reason, survey responses will not be identified by respondent or agency name. The agencies in which program managers were interviewed include the departments of Defense (plus Army, Navy, Defense Communications Agency), Health and Human Services, Interior, Commerce, Agriculture, Treasury, Labor, and Transportation; plus the National Endowment for the Arts, Library of Congress, Nuclear Regulatory Commission, Government Printing Office, Selective Service Commission, National Science Foundation, Securities and Exchange Commission, Federal Communications Commission, Environmental Protection Agency, Small Business Administration, U.S. Information Agency, National Credit Union Administration, Consumer Product Safety Division, Office of Management and Budget, Veterans Administration, Government Accounting Office, Interstate Commerce Commission, and Federal Reserve Board.

[20]Telephone interviews were conducted with 20 national advocacy groups during August, September, and October 1988. The groups whose representatives were contacted by the study include: The National Association for the Visually Handicapped, National Association of the Deaf, American Cancer Society, American Diabetes Association, National Federation of the Blind, Paralyzed Veterans of America, Arthritis Foundation, American Council for the Blind, United Cerebral Palsy, Mental Health Association, National Multiple Sclerosis Society, Disability

Rights and Education Defense Fund, National Council on Independent Living, National Association for Protection and Advocacy, World Institute on Disabilities, National Center on Deafness, National Association for Retarded Citizens, American Association on Mental Deficiency, American Heart Association, American Speech and Hearing Association.

[21]The governors' commissions are generally state affiliates of the President's Commission on Employment of the Handicapped. Their mission is to undertake efforts to enhance the employment of persons with disabilities in the public and private work forces in the state.

[22]State of Washington, Joint Select Committee on Disability Employment and Economic Participation, *Final Report to the Legislature*, 1986, Appendix C. The survey was sent to 102 state and local employers, with 34 or 33 percent responding.

[23]For more discussion on the impact of employer attitudes on employment of persons with disabilities, see John G. Schroedel and Rachel J. Jacobsen, *Employer Attitudes Toward Hiring Persons with Disabilities* (Albertson, N.Y.: National Center on Employment of the Handicapped, 1978).

7

State and Federal Compliance with Requirements to Remove Architectural Barriers and Ensure Accessibility

Recognizing the wide array of barriers to "built" America faced by persons with physical disabilities, Ronald Mace suggests that the term environmental barriers be used instead of the traditional label architectural barriers: "The problem of barriers . . . involves more than just architecture and architectural solutions. In fact, barriers are so widespread it is perhaps best to refer to them as environmental rather than architectural barriers."[1]

It was not until the 1960s that federal and state policymakers became sufficiently aware of the wide array of barriers in "built" America that effectively exclude persons with disabilities from reaching their full potential, and to enact laws to remove them. The prescription for newly constructed public buildings is relatively simple: identify a set of guidelines and standards for accessibility and mandate that the standards be designed into new facilities. Removing barriers in existing facilities has proved more troublesome. In this regard, at least two approaches have been adopted: (1) removing barriers at the time renovations or modifications are made and (2) requiring that essential programs and services offered in public buildings be made accessible to persons with disabilities.

This chapter examines the status of barrier removal efforts by the federal and state governments, and explores factors that enhance or impede compliance with the legal mandates. Data from the following sources are examined: public agency records, interviews with public officials, the mail survey of state government officials and advocacy group representatives, and telephone interviews with representatives of national advocacy groups.

BARRIER REMOVAL MANDATES: A REVIEW

Through the *Architectural Barriers Act of 1968* and its amendments the federal government mandated removal of barriers in buildings and facilities constructed or altered with federal funds, leased by the federal government, or financed by the federal government. Also included are the buildings associated with certain public transportation operations funded by the federal government.

Congress created the Architectural and Transportation Barriers Compliance Board (ATBCB) in 1973 to coordinate implementation of the barriers act. The ATBCB promulgated the Minimum Guidelines and Requirements for Accessible Design (MGRAD) in 1981 and revised them in 1982.[2] The law specifies four standard-setting agencies—the General Services Administration, the Department of Defense, Department of Housing and Urban Development, and the U.S. Postal Service—and requires each to develop accessibility standards governing the property for which it is responsible. Using the

ATBCB's guidelines, these agencies jointly issued the Uniform Federal Accessibility Standards (UFAS) in 1984.[3] These standards detail the accessibility features that must be included in new and renovated buildings.

A different approach to achieving accessibility is embodied in the administrative regulations designed for section 504 of the *Rehabilitation Act of 1973*. The statute prohibits recipients of federal financial assistance from discriminating on the basis of handicap. The coordination regulations for section 504, issued by the Department of Health, Education, and Welfare in 1978, articulate the policy of *program accessibility*: recipients of federal funds must take steps to ensure that all essential services and programs are made accessible to persons with disabilities.[4] This policy recognizes but does not require the physical removal of barriers. Federal aid recipients may, for example, reschedule services to accessible locations or provide services in the homes of persons with disabilities. The program accessibility mandate, which originally applied to all states and many local governments, was extended to the federal government through a 1978 amendment to section 504.

States, too, have enacted laws regarding the removal of barriers in public buildings. As described in Chapter 4, all states have some type of statute requiring that new buildings constructed with state funds be accessible to persons with disabilities. Some states also extend coverage to private buildings that are used by the public. States use different sets of standards when stipulating accessibility. Many states use the standards of the American National Standards Institute; others use UFAS, MGRAD, or other sets of technical guidelines. There is significant variation in state accessibility requirements for existing buildings. Some exempt buildings constructed before the enactment of barrier removal laws; others require barrier removal at the time that building renovations are made.

ACCESSIBILITY REQUIREMENTS FOR LEASED SPACE

The applicability of the *Architectural Barriers Act* to space leased by the federal government, as described in Chapter 3, was hotly debated by the Architectural and Transportation Barriers Compliance Board in the early 1980s, and the board decided to reserve this portion of the regulations for future specification. Therefore, the board's Minimum Guidelines and Requirements for Accessible Design contained no provisions governing leased space. The ATBCB justified this decision on the basis that the question was under consideration in the federal courts.

In the case *Rose* v. *United States Postal Service* (1984),[5] a public member of the ATBCB challenged the position of the U.S. Postal Service (USPS) that the law required it to adopt and apply handicapped accessibility standards to leased space only when that space was designed, constructed, or altered under the Postal Service's control. Rose and others held that accessibility requirements applied at the time leases are entered into or renewed. The federal district court ruled in favor of the Postal Service, but this ruling was overturned by the appellate court.

Given the appellate court decision, the U.S. Postal Service moved to comply with what it now saw as its responsibility to design regulations concerning accessibility in the buildings and facilities that it leased. In April 1986, the USPS issued a notice of interim standards specifying, among other things, that both customer service and employee work areas be made accessible to physically handicapped persons.[6]

Recognizing the judicial settlement, in 1987 the ATBCB proposed design standards for leased space.[7] One important provision concerned cases where no vendors offered space that would satisfy accessibility standards. In these cases, the new MGRAD provisions specify the minimum requirements that would have to be met before the space could be occupied. The minimum requirements include reference to entrances, routes in buildings, toilets, and parking spaces. With a few modifications, these provisions were approved as a final regulation by the ATBCB at its May 1988 meeting.

The *Rose* decision and the moves by the USPS and the ATBCB to promulgate accessibility regulations for leased space mark the end of the debate concerning handicapped accessibility policy. Now, the focus is on effective implementation of accessibility mandates in the thousands of buildings and facilities leased by the federal government.

ASSESSING BARRIER REMOVAL EFFORTS IN THE FEDERAL GOVERNMENT

In an effort to document the current status of accessibility in federal government buildings and facilities, the project team contacted officials in each of the four standard-setting agencies. In all cases, *the officials indicated that there is no central data base or comprehensive research study that documents the level of accessibility in buildings under their agency's jurisdiction.* The Architectural and Transportation Barriers Compliance Board also was contacted, and it also reported having no data on the accessibility features of federal buildings. Nevertheless, the agency representatives did provide information on compliance with the barrier removal mandate implementation.

Because such data do not exist and because ACIR project resources precluded actually surveying federal buildings and facilities, *it is not possible to pro-*

vide a definitive picture of how much accessibility has been achieved and the extent to which barriers continue to limit access.

The Uniform Federal Accessibility Standards contain more than 70 pages of detailed specifications for many architectural features, including doorways, rest rooms, drinking fountains, elevators, gates, garages, parking, kitchens, ramps, and many others. To assess compliance with accessibility standards fully, one would have to scrutinize each facility and rate each feature.

The section 504 program accessibility mandate is the responsibility of each federal agency. While discussions with agency representatives indicated some examples of actions to satisfy that mandate, efforts seem far more focused on the barrier removal mandate.

ACCESSIBILITY AND THE STANDARD-SETTING AGENCIES

Activities to Enhance Accessibility

As part of the *Rose* settlement, the USPS agreed to survey all affected buildings and facilities.[8] The agency began with a survey of postmasters. The survey revealed accessibility problems, but because most postmasters were not trained in technical specifications it was not possible to obtain a precise measure of the barriers.

Recognizing the great effort required to remove barriers, the USPS created an Architectural Barriers Compliance Program Branch in the summer of 1986. One of the first charges given to the new branch was to review the accessibility features of each postal facility in the nation. This is no small task, given that the USPS leases about 29,000 facilities and owns about 6,000 other buildings. The survey began in early 1987, with a completion goal set for the end of fiscal year 1989. By the end of fiscal year 1988, 14,000 facilities had been surveyed, putting the project ahead of schedule.

The survey information is being used to plan and undertake barrier removal in postal facilities; approximately 3,000 projects were scheduled for the fall of 1988. The postal service also investigates and considers actions to remove architectural barriers identified through complaints sent to the agency.

The General Services Administration has jurisdiction over about 7,000 buildings owned and leased by the federal government.[9] As one of the standard-setting agencies, GSA participated in the development of the UFAS standards. The agency adopted a policy in 1984 that gives high priority to accessibility in selecting leased space for federal programs and services.[10] GSA is developing an even stronger policy, which will require that all space leased by the agency meet UFAS requirements before the space can be occupied.

During the 1970s, the General Services Administration took action to upgrade the accessibility of its older and major buildings. This building renovation, which cost $27 million, was voluntary, given that the barriers act requires accessibility features to be included in existing buildings only when renovations are otherwise undertaken. This program sought to provide minimum accessibility features in each of the major buildings. Although many of these older buildings still would not pass UFAS standards, this action removed some of the most limiting barriers.

The departments of Defense and Housing and Urban Development were also contacted by the project staff. Like the other standard-setting agencies, their officials reported no data bases concerning the extent of barrier problems or measures taken to achieve accessibility. The Department of Housing and Urban Development reported that since 1975 it had undertaken 1,546 projects that resulted in the construction of 24,880 housing units for physically handicapped and elderly persons.[11] Many of these projects were undertaken through HUD's section 202 program, which supplies federal loans to finance construction or substantial rehabilitation of residential projects and related facilities to serve disabled and elderly persons.[12] The Department of Defense also indicated that it is engaged in several initiatives to remove physical barriers although no firm figures on these projects were available.[13]

In sum, the standard-setting agencies reported that many activities are under way. While the U.S. Postal Service could provide some data on the number of projects ongoing, none of the agencies could clearly document the status of efforts to remove barriers. Two agencies pointed to budget cuts as one reason why they were unable to document the forms and extent of barrier removal.

There are other federal buildings that fall outside the jurisdiction of the standard-setting agencies. Some are the buildings used by the U.S. Department of State overseas; included here are embassies, consulates, and other facilities. Achieving accessibility in these buildings is often difficult because they tend to be older, historic, and infrequently subject to changes in occupancy.[14]

When new facilities are constructed, the Department of State uses the ATBCB's MGRAD standards to comply with the accessibility mandate. Other efforts have been made to introduce basic accessibility features into those portions of overseas buildings used by the public. Less attention has been given to accessibility for employees, in large measure because the stringent medical requirements for foreign service officers exclude many disabled persons from working in these facilities. The department has faced

problems in convincing foreign vendors to install accessibility features in facilities it leases.

The buildings in the U.S. Capitol complex fall under the jurisdiction of the Architect of the Capitol.[15] In the early 1970s, these buildings—including the U.S. Capitol, the Supreme Court, and the Library of Congress—came under criticism for the barriers in them. The Congress was under no legal obligation to respond to this criticism because the *Architectural Barriers Act* did not include the Capitol complex. However, substantial efforts have been made to remove physical barriers, although they were complicated by the age and historic character of the buildings. Through a series of modifications, basic accessibility has largely been achieved in these buildings, although circuitous routes are sometimes required for internal mobility.

One interesting recent innovation has been the development of a special services unit within the Senate's Sergeant-at-Arms office to assist in removing barriers. This unit has also designed special tours and materials so that persons with physical disabilities can have greater access to the Capitol. Special maps have been designed to show accessible routes, both in regular print and braille.[16]

Difficulties in Implementation

Interviews with representatives of the standard-setting agencies provided insights into obstacles in complying with the barrier act's accessibility mandate. One set of problems relates to leased facilities; in this regard, private vendors were cited as a frequent problem. These vendors operate under leases that originated at many different times and which contain varied provisions. Both GSA and the USPS noted problems in getting owners to make required accommodations.

In many instances, the agencies plan to make the accessibility modifications themselves, at their own expense. Here, again, vendors can frustrate the process. Federal regulations require that when agencies make changes to the leased space of private vendors, such changes be reversed when the lease is terminated. Obviously, the intent of this provision was to protect lessors from suffering losses. This provision was not designed with architectural accessibility in mind. It makes no sense to replace barriers once they are removed or for agencies to incur the added expense of "undoing" their accessibility efforts. The federal regulations allow a way around this problem through a waiver of restoration. Some lessors, however, have refused to sign or return these waivers to agencies, which frustrates implementation of accessibility changes.

Besides the problems associated with leased space, officials pointed to the enormity of the task involved in coordinating barrier removal policies throughout the thousands of federally owned and operated buildings. In most cases, decisions about facility construction, design, and renovation are made by individuals in regional or district offices. In order for the barrier removal mandate to be effective, all of the people responsible for property management and design must be aware of and follow accessibility guidelines. These same individuals, of course, must respond to many other building code and construction guidelines, meaning that in some instances accessibility features are not given full attention.

Finally, limited resources were also cited as a problem, not in designing accessibility into new construction or into the remodeling of existing buildings, but in locating funds to remove barriers outside of those processes. Although some features can be installed with a minimum of cost and difficulty, others require structural modifications that do entail costs.

ACCESSIBILITY DATA GATHERED BY EEOC

As part of its regular on-site reviews of headquarters operations and field installations, the Equal Employment Opportunity Commission (EEOC) makes a rudimentary assessment of accessibility. This review is not intended as a thorough review of every design feature in terms of the Uniform Federal Accessibility Standards, but as a way to identify possible architectural barriers that could prevent persons with mobility or sensory impairments from working at the installation.

EEOC notes the percentage of federal field installations that are found to be basically to fully accessible. In fiscal year 1986, 37 percent of the inspected facilities met this criterion, down from around 50 percent in earlier years.[17] A small percentage of facilities was rated as substantially inaccessible. Most frequently, these buildings are relatively old; some of them are historic in nature, meaning that barrier removal efforts may conflict with historic preservation initiatives.

Another view of accessibility is provided through agencies' self-assessments in their annual reports to the EEOC regarding section 501 implementation.[18] It is clear from a review of these reports that some agencies took greater pains than others to identify and describe the problems they encounter.

Among the accessibility constraints and problems identified by the agencies are the following:

- Agency operations being located in historic buildings where accessibility changes can harm historical integrity;
- Budget restrictions and cutbacks, which have reduced the funds available for barrier removal;

Table 7-1

Report of Complaints Received, by Fiscal Years, 1977-87*

FY	Change (percent)	Complaints Received	Cases Resolved: Under Investigation	Cases Resolved: Monitoring Corrective Action	Cases Resolved: Complaints Closed	Complaints Closed FY 1987	Complaints Closed for: Corrective Action	Complaints Closed for: No Jurisdiction	Complaints Closed for: No Violation
1977	100.0%	0	0	0	100	0	43	49	8
1978	55.0	155	0	0	155	0	62	85	8
1979	13.0	176	0	0	176	0	89	83	4
1980	-9.0	160	4	0	156	0	56	88	12
1981	-33.0	106	6	2	98	1	43	54	1
1982	12.0	119	6	2	111	1	53	53	5
1983	8.4	129	14	2	113	5	42	60	11
1984	80.0	233	54	3	176	13	33	139	4
1985	6.5	249	53	3	193	59	31	156	6
1986	-63.5	91	50	3	38	37	4	33	1
1987	117.5	217	206	4	7	7	0	4	3
Totals		1,735	393	19	1,323	123	456	804	63

*Figures are current as of October 1, 1987

Source: Architectural and Transportation Barriers Compliance Board, *Report of the ATBCB for Fiscal Year 1987* (Washington, DC: ATBCB, 1987), p. 7.

- Location of installations in temporary facilities that are planned for phase-out in the immediate future;
- Equipment problems in devices used to provide visual fire warnings; and
- Slow action by the General Services Administration in removing identified barriers.

Federal agencies also reported special problems in leased space, with private owners often being unwilling to make changes or slow to remove barriers. One agency noted that because of its mission, it often is required to lease space in rural areas. As a rule, there is less leased space in these areas, and available facilities are less likely to be constructed so as to be accessible to persons with disabilities.

ACCESSIBILITY COMPLAINTS RECEIVED BY THE ATBCB

Ensuring compliance with provisions of the *Architectural Barriers Act* and investigating complaints about physical and other barriers in federal buildings are among the central responsibilities of the Architectural and Transportation Barriers Compliance Board. Review of data concerning complaints received by the ATBCB offers another perspective on the accessibility problems encountered in federal government buildings.

Table 7-1 presents data on the number and disposition of complaints received by the ATBCB from 1977 to 1987.[19] During those years the ATBCB received 1,735 complaints concerning a wide range of problems, such as inaccessible entrances or lack of ramps, curb cuts, elevators, and signage or parking for handicapped persons. The annual number of complaints has ranged from 91 to 249, with an average of 157 complaints per year; the annual average for the years 1984 to 1987 was almost 200 complaints. The ATBCB attributes this rise in complaints to increased public awareness of the board and its function.[20]

Of the 1,323 complaints that the ATBCB was able to close, 456 (34 percent) resulted in corrective action being taken to remove barriers. Sixty-one percent of the cases were closed because the ATBCB lacked jurisdiction. The lack of jurisdiction generally resulted because the disputed building or facility did not involve federal funds or because no design, construction, or alteration was made after 1968. In 63 of the complaints (5 percent), the ATBCB investigation found no violation of the *Architectural Barriers Act's* provisions.

In most complaint cases, the ATBCB reports that it is able to settle disputes voluntarily if it is determined that corrective action is appropriate; most of the complaints represent instances where corrective action is warranted.

The troublesome finding from these data is that in almost two-thirds of the cases, the ATBCB had no jurisdiction. Within these complaints, there are likely to be many real obstacles to accessibility that merit corrective action. In some cases, the buildings were not constructed by the federal government or with

federal funds. It is not clear whether these cases occur in space leased by the federal government or in buildings operated by state and local governments. Recent actions to tighten regulations about accessibility in leased space may help in this regard. In other cases, accessibility barriers are likely to be long-standing features in older federal buildings because the law requires barrier removal only when other renovations are made. In these cases, the law may have little positive and immediate effect in barrier removal.

THE VIEW OF NATIONAL ADVOCACY GROUPS

During telephone interviews, representatives of national advocacy organizations asked about the effectiveness of federal agencies in achieving accessibility.[21] As with employment protection programs (discussed in the previous chapter), the federal government received mixed grades. Some agencies were seen as more effective than others in reducing the number of buildings with significant impediments still in place.

Several respondents made an interesting point about new buildings and facilities. Even here, where one would expect that accessibility would be assured, they noted that new barriers may be introduced unintentionally during repairs and renovations. They suggested that compliance with accessibility standards needs to be an ongoing concern for agencies and that there must be safeguards to prevent the reintroduction of physical barriers.

Several of these representatives argued that property management personnel in many federal agencies need more education and training about accessibility standards. It has been the groups' experience that many agencies, particularly in field installations, lack a thorough understanding of their responsibilities under the *Architectural Barriers Act* and section 504.

THE VIEW OF HANDICAPPED-PROGRAM MANAGERS

One further view of federal government compliance with accessibility mandates is provided by officials who oversee the implementation of handicapped employment programs.[22] The issues of employment protections and accessibility converge in the reasonable accommodation mandate. As discussed in Chapter 6, the handicapped-program managers reported that removal of physical barriers was among the reasonable accommodation measures. The consensus of this group is that reasonable accommodations, including the modification of building features, can often be achieved at little or no cost to the agency. One of these respondents concurred with advocacy group representatives in warning of the danger of barriers being unintentionally introduced when building renovations or restructuring are undertaken.

IMPLEMENTATION EXPERIENCES IN THE STATES

Through telephone contacts with officials in all 50 states, data were sought on the extent of accessibility in state government buildings and facilities. As in the federal government, *state governments were not able to provide data on the barriers that exist in public buildings or the types and extent of efforts to remove those barriers.* Most officials said that there is no data base on accessibility features or problems in state buildings. Like officials in the federal government, state officials could describe certain types of actions and could see overall progress in removing physical barriers.

In the mail survey to state officials and advocacy groups, a series of questions related to programs designed to enhance the accessibility of public buildings.[23] Respondents were asked to rate the effectiveness of the federal government (in federal buildings in the state) and of their state government in removing physical barriers and achieving accessibility. The responses of state officials and advocacy groups are presented in Table 7-2.

Overall, these respondents judged the barrier removal efforts by the federal and state governments as more effective than efforts to hire and promote persons with disabilities (see Table 6-6). *Both public officials and state advocacy group representatives tended to give roughly equivalent ratings to the effectiveness of their state government and the federal government in compliance with accessibility mandates.* This pattern is somewhat different from that found for hiring and promoting persons with disabilities, where the federal government was rated, on the average, more effective than the states.

Intergovernmental Issues

State respondents to the mail survey were asked to assess the level of federal funding of mandates to remove physical barriers and achieve accessibility in state and local government buildings. Only 13 percent of state officials and 18 percent of advocacy group representatives judged federal funding as more than or about enough (Table 7-3). Large proportions of these groups rated federal funding as less than enough or hardly any.

Respondents were also asked to compare federal and state commitments to implementing federal accessibility mandates. Their answers are presented in Table 7-4. On this question, state officials and advocacy group representatives tended to offer divergent assessments. Sixteen percent of the state officials said that their state is more committed than the fed-

Table 7-2

Assessment of Federal and State Efforts to Remove Architectural Barriers: View from the States

	Percentage of Respondents Rating Efforts to Remove Architectural Barriers, by Rating Category			
	Assessment of State Government Representatives (N = 150)		Assessment of State-Level Advocacy Groups (N = 142)	
Rating Category	**State**	**Federal**	**State**	**Federal**
1. Very Effective	14.0%	10.0%	9.9%	10.6%
2.	33.3	28.0	31.0	28.2
3.	28.0	24.0	23.9	25.4
4.	15.3	12.7	12.7	9.9
5. Not Very Effective	7.3	6.7	12.7	4.2
6. Don't Know/No Response	2.0	18.7	9.9	21.8
Mean Response*	2.68	2.73	2.86	2.60

*Because the variable was coded on the mail survey with a value of 1 for "very effective" through 5 "not very effective," the lower the mean score, the higher the effectiveness.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October 1988.

eral government, and 43 percent rated their state as equally committed. Thirty-seven percent of state advocacy group respondents rated their state government as less committed that the federal government. Only 11 percent said that their state government is more committed to implementing the federal accessibility mandate.

Table 7-3

Assessment of Federal Funding of Mandate to Remove Architectural Barriers: View from the States

	Assessment of State Government Representatives (N = 150)	Assessment of State-Level Advocacy Groups (N = 142)
Rating of Federal Aid		
1. More than Enough	0.7%	0.7%
2. About Enough	12.7	16.9
3. Less than Enough	36.0	35.9
4. Hardly Any	16.0	8.5
5. None at All	4.7	2.8
6. Don't Know	30.0	35.2
Mean Response*	3.16	2.94

*Because the variable was coded on the mail survey with a value of 1 for "more than enough" and 5 for "none at all," the lower the mean score, the higher the assessment of federal funding.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October, 1988.

Table 7-4

Comparison of Federal and State Commitment to Implementing Federal Mandate to Remove Architectural Barriers: View from the States

	Assessment of State Government Representatives (N = 150)	Assessment of State-Level Advocacy Groups (N = 142)
Compared to the Federal Government, State Commitment to Federal Mandate to Remove Architectural Barriers		
1. State More Committed	16.0%	11.3%
2. State Equally Committed	43.3	33.1
3. State Less Committed	20.1	37.3
4. Don't Know	21.6	18.3
Mean Response*	2.14	2.35

*Because the variable was coded on the mail survey with a value of 1 for "more committed than federal government" and 3 for "less committed than the federal government," the lower the mean score, the higher the perceived commitment of the state as compared to the federal government.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October, 1988.

Table 7-5

Assessment of Impediments to Removing Architectural Barriers in State Government Buildings and Facilities: View from the States

	Percentage of Respondents Identifying Impact of Impediment by Type and Seriousness of Impediment*							
	Assessment of State Government Representatives (N = 150)				Assessment of State-Level Advocacy Groups (N = 142)			
Magnitude of Impact	None	Weak	Moderate	Strong	None	Weak	Moderate	Strong
Factor								
1. Low Recognition of Impact of Barriers	9.3%	18.0%	42.0%	28.0%	5.6%	12.7%	41.5%	34.5%
2. Confusion about Accessibility Standards	12.0	23.3	36.0	26.7	4.9	15.5	33.8	40.8
3. Concerns about Accommodation Costs	5.3	10.0	32.7	49.3	2.8	8.5	32.4	50.7
4. Insufficient Funds for Accommodation	5.3	14.0	33.3	44.7	4.9	14.8	32.4	41.5
5. Responsibility for Enforcement Divided among Agencies	15.3	18.7	36.0	26.7	5.6	13.4	38.0	36.6
6. Lack of Leadership Support/ Commitment	10.7	18.0	34.0	34.7	4.2	13.4	31.7	45.1
7. Other Policy Issues More Important in State	8.7	14.7	36.0	37.3	5.6	9.2	24.6	54.9

*"Don't Know" responses are not listed in this table.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October 1988.

Impediments to the Removal of Barriers in State Government Buildings and Facilities

In order to better understand the factors that can impede efforts to remove barriers in state government buildings, respondents to the mail survey were asked to rate the seriousness of seven potential impediments. Their responses are reported in Table 7-5. Table 7-6 ranks the impediments in terms of the percentage of state officials and state advocacy group respondents who rated them as serious.

These tables show that a strong majority of both state officials and advocacy groups found all seven impediments to be either moderately or strongly at work. However, the state officials differentiated more among the seriousness of these impediments, rating confusion about standards and divided enforcement responsibilities substantially less important than other impediments and less important than the advocacy groups thought they were. The advocacy groups found all seven impediments to be highly significant and approximately equally weighted.

Combining both groups, and using just the "strong" impediment responses, the consensus seems to be that the mutliplicity of competing mandates, insufficient funds and concerns about barrier modification costs, and lack of leadership commit-

Table 7-6

Rank Ordering of "Serious Impediment" Factors Identified by State Officials and Advocacy Group Representatives

State Officials	Advocacy Groups
1. Concerns about Accommodation Costs (49%)	1. Other Policy Issues More Important in State (55%)
2. Insufficient Funds for Accommodations (45%)	2. Concerns about Accommodation Costs (51%)
3. Other Policy Issues More Important in State (37%)	3. Lack of Leadership Support/Commitment (45%)
4. Lack of Leadership Support/Commitment (35%)	4. Insufficient Funds for Accommodations (42%)
5. Low Recognition of the Impact of Barriers (28%)	5. Confusion about Accessibility Standards (41%)
6. Responsibility for Enforcement Divided among Agencies (27%)	6. Responsibility for Enforcement Divided among Agencies (37%)
7. Confusion about Accessibility Standards (27%)	7. Low Recognition of Impact of Barriers (35%)

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October 1988.

ment to barrier removal are of greater concern than confusion about standards and enforcement responsibilities or low recognition of the barriers problem.

Other Impediments to Implementation: Open-Ended Responses

In an open-ended portion of the mail survey, respondents were asked to identify variables that either enhance or detract from efforts to achieve accessibility through removal of barriers. As described below, some respondents took the opportunity to reiterate the impact of impediments discussed above. Others noted additional factors that have a negative effect on implementation.

The Cost Issue, Once Again. Many respondents noted again that cost-related issues cause difficulties in implementing barrier removal policies. Some pointed to the costs of renovating existing buildings; here, they said, their state government had not appropriated much money for barrier removal. This problem seems greatest for older buildings. In other circumstances, respondents noted that the problem is not so much real costs, but perceptions about costs that discourage public officials from moving more rapidly to identify barriers and take steps to remove them.

Communication Barriers. A large number of respondents noted that persons with disabilities face not only architectural or physical barriers but also communication barriers, especially persons with visual, hearing, or other sensory impairments. It was suggested that new approaches to barrier removal should be considered and developed to provide assistive devices and other services to enhance communications.

Negative Attitudes and Misconceptions. Both public officials and advocacy group representatives pointed to negative attitudes and misconceptions as potent impediments to barrier removal policies. Often, according to the respondents, these attitudes are based on ignorance about the lives and needs of persons with disabilities and the negative impact that barriers have on them. Many respondents argued that the nation has not fully developed a philosophical commitment to removing barriers and achieving greater accessibility in public buildings and facilities.

Management Issues and Constraints. Some state officials identified confusion about standards as an obstacle to implementation of accessibility mandates. They noted that there are different sets of accessibility standards derived from federal regulations, state laws and regulations, and local ordinances and building code requirements. This can make it difficult to determine what standards are applicable to a given situation.

As was the case with employment, state government respondents noted the current fiscal and political constraints operating to impede implementation of barrier removal. One official noted, for example, that his state was operating under a budget freeze; another official was working under a statewide spending cutback. Under tight fiscal conditions, resulting from a sluggish economy in the state and a political aversion to increasing taxes, it is difficult to obtain funds for barrier removal.

FEDERAL AND STATE EXPERIENCES CONTRASTED

It is apparent from the data presented in this chapter that firm conclusions are difficult to reach about the current status of accessibility in public buildings operated by state and local governments. Federal and state agencies have not created data bases that allow them to rate either the level of barriers that remain or the types of actions that are being taken to remove the barriers. Such information bases will be required if physical barriers are to be eliminated in public buildings and facilities.

Findings from interviews with officials in federal standard-setting agencies indicate that some barrier removal initiatives are under way. At the same time, it is evident from complaint data and EEOC installation reviews that barriers and other obstacles to access remain in federal buildings. The major problem is that federal and state officials do not yet have full data about the current status of accessibility barriers in public buildings and facilities.

While the next chapter provides an in-depth assessment of factors that enhance or impede compliance with accessibility and employment protection mandates, it is useful here to identify key issues related to policy implementation. The first issue, which often causes confusion, is the range of different standards that are applicable. One set of standards is required when new federal buildings are constructed, another when buildings constructed before 1968 are renovated or altered. Within the federal government, the MGRAD guidelines serve as the basis of the UFAS standards promulgated by the standard-setting agencies. These rely heavily on the accessibility standards issued by the American National Standards Institute, but there are differences. In state government, these and other standards are used to guide state accessibility mandates.

Second, there is the recurrent issue of costs. In existing buildings, renovations and structural changes can represent significant expenditures. Budgetary constraints appear to have slowed the pace of accessibility actions. At the same time, it is clear that other measures to enhance accessibility can be taken relatively inexpensively; here, the impediment seems to

be fear of high costs that lead policymakers to avoid pushing for barrier removal.

Third, leased facilities pose special implementation. For several years, the applicability of the *Architectural Barriers Act* to leased space was debated and ultimately decided in the federal courts. Late in 1988, federal regulations were put in place to specify accessibility requirements in leased space. Now the focus moves to the field, where standard-setting agencies must first assess the accessibility barriers that exist in leased locations, many of which are distributed widely across the nation. Then, efforts must be made to eliminate the barriers. As described above, private vendors of leased space have not always embraced the notion of making modifications to enhance accessibility, even when they would not have to bear the cost. Here, long-term problems in the relationships between the federal government and the vendors of leased space have generated implementation delays.

Fourth, representatives of advocacy groups and federal agencies warn of the need for ongoing vigilance concerning the erection of barriers. They argue that it is not uncommon for such barriers to "spring up" with renovations or restructuring of buildings and facilities.

Finally, the nation has begun to recognize that not all barriers are physical or architectural. Persons with sensory impairments face many communications barriers that harm their employment opportunities and their utilization of the resources and services offered in public buildings. New regulations are being put in place to help alleviate obstacles to communications, including required assistive devices, visual alarms, and many other types of technological advances. A fundamental problem, however, relates to the unawareness of those inside and outside of government about the problems generated by communications barriers, which are far less recognized or understood than architectural barriers.

NOTES

[1]Ronald Mace, "Physical Facilities and the Handicapped," in *Civil Rights Issues of Handicapped Americans: Public Policy Implications* (Washington, DC: U.S. Civil Rights Commission, 1980), p. 264.

[2]47 *Federal Register* 33862.

[3]49 *Federal Register* 31528.

[4]43 *Federal Register* 2132-2139.

[5]774 F.2d 1355 (1984).

[6]51 *Federal Register* 13122.

[7]52 *Federal Register* 4352.

[8]In-person interview with Doris Hill (June 3, 1988) and telephone interview with Melinda Halsey (August 2, 1988), both of the Architectural Barriers Compliance Program Branch of the postal service.

[9]In-person interview with R. Steve McCormick, Office of Design and Construction, General Services Administration (June 2, 1988).

[10]General Services Administration, Policy PRL-84-15, September 28, 1984.

[11]Telephone interview with David Harre, U.S. Department of Housing and Urban Development, June 3, 1988.

[12]For a more detailed description of HUD's section 202 program for handicapped and elderly persons see U.S. Department of Housing and Urban Development, *Housing and Disabled People* (Washington, DC: HUD, 1985).

[13]Telephone interview with Judith Gilliam, U.S. Department of Defense, July 8, 1988.

[14]Telephone interview with Peter Hahn, U.S. Department of State, August 3, 1988.

[15]Telephone interview with Debra Gans, Senate Special Services Office, Senate Sergeant at Arms, August 3, 1988.

[16]Persons wishing information on the special tours for disabled people in the nation's capital and the Capitol Building should contact the Senate Sergeant at Arms, Special Services Office, United States Senate, Crypt of the Capitol, Washington, DC 20510.

[17]See U.S. Equal Employment Opportunity Commission, *Annual Report on the Employment of Minorities, Women & Individuals with Handicaps in the Federal Government, Fiscal Years 1984 through 1986* (Washington, DC: EEOC, 1987). No reason was given for the drop in installation accessibility for 1986; this probably is a function of the installations selected in that year.

[18]This self-reported information on accessibility problems is included as one section, "Report on Facility Accessibility," in the "Affirmative Action Plan Update and Report of Accomplishments for Agencies with 501 or More Employees." These reports are on file at the EEOC national office in Washington DC. Agency reports for fiscal years 1984 through 1986 were reviewed by project staff.

[19]The data discussed here and presented in Table 7-1 are taken from the *Report of the Architectural and Transportation Barriers Compliance Board*, Report Submitted to the President and Congress of the United States (Washington, DC: ATBCB, 1987).

[20]Ibid, p. 7.

[21]Telephone interviews were conducted with national advocacy groups during August, September, and October 1988. Those groups include: The National Association for the Visually Handicapped, National Association of the Deaf, American Cancer Society, American Diabetes Association, National Federation of the Blind, Paralyzed Veterans of America, Arthritis Foundation, American Council for the Blind, United Cerebral Palsy, Mental Health Association, National Multiple Sclerosis Society, Disability Rights and Education Defense Fund, National Association for Protection and Advocacy, World Institute on Disabilities, National Center on Deafness, National Association for Retarded Citizens, American Association on Mental Deficiency, American Heart Association, American Speech and Hearing Association.

[22]These telephone interviews with handicapped-program managers were conducted in July and September 1988. Respondents were promised, in letters they received explaining the project, that their comments would be completely confidential. For this reason, survey responses will not be identified by respondent or agency name. The agencies in which program managers were interviewed include the departments of Defense (plus Army, Navy, Defense Communications Agency), Health and Human Services, Interior, Commerce, Agriculture, Treasury, Labor, and Transportation; plus the National Endowment for the Arts, Library of Congress, Nuclear Regulatory

Commission, Government Printing Office, Selective Service Commission, National Science Foundation, Securities and Exchange Commission, Federal Communications Commission, Environmental Protection Agency, Small Business Administration, U.S. Information Agency, National Credit Union Administration, Consumer Product Safety Division, Office of Management and Budget, Veterans Administration, Government Accounting Office, Interstate Commerce Commission, and Federal Reserve Board.

[23]The survey instrument and the methodology for its application are included in Appendix C.

8

State and Federal Compliance with Regulatory Mandates: Findings, Contrasts, and Policy Implications

The final task of this report is to reexamine and present conclusions about the central questions of this study: (1) To what extent have the federal and state governments complied with disability rights mandates? (2) Does the federal government practice what it preaches in terms of mandates to employ persons with disabilities and remove architectural barriers? (3) How do federal and state laws compare in terms of mandated disability rights policies? (4) What is the status of intergovernmental relationships regarding compliance with parallel regulatory mandates? (5) What do we know about factors that influence the compliance of public agencies with regulatory mandates?

COMPARING FEDERAL AND STATE GOVERNMENT PERFORMANCE IN ACHIEVING REGULATORY MANDATES

The question that motivated this study was whether the federal government effectively implements regulatory mandates on its own agencies as well as on state and local governments. A clear picture is needed of the performance of the national and state governments in order to draw an accurate comparison between the two.

The federal-state comparison is a bit complex in the context of disability rights, however, because the mandates are not completely comparable. The federal government placed a strong barrier removal mandate on itself through the *Architectural Barriers Act* and mandated program accessibility for states and localities as recipients of federal funds. Then, through section 501 of the *Rehabilitation Act of 1973*, the Congress mandated that federal agencies take affirmative action to hire and promote persons with disabilities. Through section 504 of the act, the Congress mandated that states and localities, as recipients of federal financial assistance, make reasonable accommodation to employ disabled individuals.

Despite these differences, one can argue that the federal government has sought, through disability rights mandates, to move itself and state and local governments toward two important objectives: increasing the employment opportunities of persons with disabilities and removing architectural features of public buildings and facilities that impede the access of physically handicapped persons. At the level of broad policy objectives, there is a similarity of mandates.

Data collected from federal agencies and state governments concerning compliance with these two disability rights mandates were not very satisfying. The primary finding of this research is that *the national and state governments have not, for the most part, developed strong data bases that document their performance on disability rights mandates related to employment and architectural barrier removal.* The main

federal exceptions are efforts by the Equal Employment Opportunity Commission and the Office of Personnel Management to gather data on employment of persons with disabilities in the federal public sector. Only a few state governments collect and disseminate data on employment of persons with disabilities.

In terms of facility accessibility and the extent of architectural barriers, neither federal nor state agencies could document their compliance performance clearly. Public officials could describe some of the innovations and initiatives planned or under way, but they could not assess comprehensively what has been done and what still needs to be accomplished to satisfy regulatory mandates.

Because of data limitations, this report is unable to answer definitively the question of whether the federal government practices what it preaches. Many insights, however, are provided by the information collected through this project. In terms of employment of persons with disabilities, where federal and limited state data are available, the picture shows some rough federal-state equivalencies. Approximately 3 to 5 percent of state and federal employees have a handicap. Definition and identification problems, however, make this a tentative assertion.

The findings do document that implementation is moving forward. Many laws and policies have been developed, regulations and guidelines have been put in place, and implementation is under way. The nation has begun to change, and public sector efforts are pushing toward greater employment opportunities for individuals with disabilities and greater accessibility in public buildings and facilities. At the same time, the findings of this report suggest that implementation of regulatory policies is closer to infancy than maturity, with more goals than achievements.

How one assesses the progress of the federal and state governments depends on expectations about what can be achieved and how quickly policy objectives can be satisfied. If one were to compare disability rights policies to the full array of social programs undertaken during the last quarter-century, one would probably give a relatively favorable rating to the disabilities performance thus far. The effort to throw off the inertial tendency to disregard the problems and needs of persons with disabilities took great energy by advocates and policy supporters. Yet, once the movement toward disability rights began, it seems to have kept moving forward, even if slowly. In many ways, significant achievements have been made in the last decade or two.

Policy achievements are borne out in the survey of persons with disabilities conducted by Louis Harris, Inc., for the International Center for the Disabled. Seven out of ten respondents said that things had gotten much better or somewhat better for disabled persons during the past decade.[1] Part of the credit for this improvement certainly goes to the federal government. A two-thirds majority of respondents to the ICD survey said that federal laws passed since the late 1960s give better opportunities to persons with disabilities. The ICD survey did not ask about state and local government policies. From the perspective of where we started, the policy changes and implementation practices in place are significant.

One also can compare current conditions with what we hope to achieve through regulatory mandates. *From the perspective of the goals and aspirations attached to disability rights policies, current practices and achievements fall short of the mark.* Implementation of these mandates has encountered a series of complex and interrelated obstacles, some of which have proven persistent and very difficult to overcome. The impact of negative attitudes and popular misconceptions about the needs and capabilities of Americans with disabilities immediately comes to mind. Some implementors have moved forward with creativity, imagination, and diligence in pursuit of mandated objectives. Others have either moved forward reluctantly or have resisted regulatory mandates.

DOES THE FEDERAL GOVERNMENT PRACTICE WHAT IT PREACHES?

The information gathered for this study offers several perspectives from which to consider the question of whether the federal government practices what it preaches with regard to regulatory mandates. The legislative histories of disability rights policies show that the federal government, on recognizing that a portion of its citizens experienced substantial discrimination, took bold steps to create legislative protections. Through a series of laws, reviewed in Chapter 3, the U.S. Congress placed disability rights mandates on both federal agencies and on state and local governments that receive federal aid. These federal laws, in turn, stimulated many state governments to review their own statutes and to increase state legal protections for persons with disabilities. In this way, the federal government established a leadership position with regard to disability rights mandates.

The federal government has found, however, that it is generally easier to create mandates than to implement them. The evidence presented in this report shows clearly that the federal government has encountered difficulties and problems in implementing both employment protection programs and barrier removal policies. In no way has the implementation of disability rights mandates been easy, predictable, or immediately effective.

Initial problems focused on the development of administrative regulations. In both cases, it took sev-

eral years for the responsible agencies to promulgate regulations. During the regulation drafting process, national officials displayed diverse and often contradictory approaches and preferences. Perhaps the clearest example of difficulty in refining regulatory mandates is the protracted debate that took place regarding the applicability of the *Architectural Barriers Act* to space leased by the federal government. Only in 1988, 20 years after the law was enacted, was the leased space issue resolved and regulations promulgated.

Once administrative policies were put in place, compliance activities shifted to a variety of decision-makers in federal agencies, specifically to those who make hiring decisions and to those who oversee the construction and renovation of federal buildings and facilities. In terms of employment practices, individuals with serious or "targeted" disabilities remain substantially underrepresented in the federal work force. Despite some gains in the employment of these citizens, handicapped persons who have been hired by the federal government are found disproportionately in lower level positions.

Federal agencies have been uneven in employing individuals with serious disabilities, with agencies whose missions are most closely related to disability and vocational rehabilitation policies demonstrating relatively more success. Some of the most well-known federal agencies—including the departments of Energy, Justice, State, and Transportation, and the Executive Office of the President—fall well below the governmentwide average in employing persons with targeted disabilities. Fifteen smaller federal agencies employ no persons with a targeted disability.

The role of the U.S. Congress in mandating employment protections for persons with disabilities is somewhat ironic. Congress set the ball rolling by creating employment-related mandates for agencies of the federal executive branch and for state and local governments that received federal financial assistance. Congress did not, however, include itself under the provisions of sections 501 or 504 of the *Rehabilitation Act of 1973*. Neither has Congress regularly collected or disseminated information on the employment of persons with disabilities, even though such data are regularly gathered and reported on federal agencies by the Equal Employment Opportunity Commission. The pattern with regard to architectural accessibility is similar: the provisions of the *Architectural Barriers Act* were not applied to the Congress. Some observers see this action of the Congress—to create a strong regulatory mandate for the executive branch and to exempt itself—as a double standard.

Findings reported in this study indicate that federal agencies, like their state counterparts, have encountered several types of impediments to implementing both the employment protection and barrier removal mandates. The negative influences on implementation are reviewed in detail below. The relevant point here is that such factors as negative attitudes about the capabilities of persons with disabilities, inadequate resources, insufficient support and commitment by top officials, communication problems, and division of enforcement responsibility across multiple agencies all work to impede compliance with disability rights mandates. Federal agencies have been no more immune to these influences than state governments. Successful implementation of disability rights mandates requires that these obstacles be overcome.

Data from the mail survey of state officials and advocates provide another perspective. Respondents were asked to what extent they would say the federal government practices what it preaches with regard to compliance with its own disability rights mandates. Their responses are reported in Table 8-1.

The results indicate that sentiments about federal compliance are not uniform among state officials and advocates knowledgeable about the disability field. Only 8 percent of state officials and 4 percent of advocacy group representatives said that the federal government "very much" practices what it preaches with regard to disability rights mandates. However, much larger percentages of both groups said that the federal government "somewhat" practices what it preaches. Despite these figures, it is clear that some

Table 8-1

Does the Federal Government Practice What It Preaches with Regard to Disability Rights Mandates: View from the States

	Assessment of State Government Representatives (N = 150)	Assessment of State-Level Advocacy Groups (N = 142)
The Federal Government Practices What It Preaches		
1. Very Much	8.0%	4.2%
2. Somewhat	43.3	57.0
3. Only a Little	25.3	23.9
4. Not at All	5.3	1.4
5. Don't Know	18.0	13.4
Mean Response*	2.37	2.26

*Because this variable was coded as 1 for "very much" through 4 for "not at all," the lower the mean response, the higher the rating of the federal government practicing what it preaches.

Source: Mail survey of state officials and state advocacy organizations conducted by the ACIR project study team, July-October, 1988.

questions remain about the federal government's compliance efforts. A substantial minority of both groups (31 percent of state officials and 25 percent of advocates) rated the federal government as "only a little" or "not at all" practicing what it preaches.

In conclusion, there are some lessons to be learned from the experience with disability rights mandates. Rights and protections for persons with disabilities were established through federal laws that were strong on symbol but weaker in terms of specifying intent and strategies for implementation. Agencies responsible for implementation struggled for many years to promulgate effective regulations. Once in place, federal agencies began action to comply with regulatory mandates, encountering many types of obstacles on the way to achieving some successes. It has taken substantial energy to reach the current situation, in which the federal government has refined disability rights mandates and begun actions to implement them effectively. There have been accomplishments, but much more needs to be done. The federal government has, therefore, begun to practice what it preaches, but such practice has proven more arduous and complex than initially anticipated. On the whole, therefore, one finds about as much variation in compliance across federal agencies as across the states.

COMPARING FEDERAL AND STATE LAWS

Chapters 3 and 4 of this report outlined and compared federal and state laws regarding employment protections for persons with disabilities and the removal of physical barriers in public buildings and facilities. These comparisons indicate that, in some ways, federal laws tend to be stronger, but state laws have greater reach. In terms of equal employment programs, on the one hand some state laws apply to the employment practices of private as well as public employers. On the other hand, the reasonable accommodation feature of the federal mandate is not included in the laws of some states. A relative weakness of many state laws is that they do not extend employment protections to those with mental disabilities.

Both state and federal laws have been generally effective in ensuring that newly constructed buildings and facilities are accessible. Despite some instances where accessibility features have been overlooked or where barriers have been introduced after initial construction, the level of accessibility provided in new public buildings has increased dramatically, in large measure because of these federal and state laws.

The problem is, of course, that governments will continue to use buildings constructed before accessibility standards were devised and mandated. In many cases, these older buildings have not been altered or renovated in such a way as to require removal of structural barriers. As compared to the federal government, state governments often stipulate fewer requirements for barrier removal in existing buildings.

There is substantial variation in the extent to which state laws require accessibility in buildings and facilities that are privately owned but operated for public purposes (e.g., entertainment, commercial activity). Similar to government buildings, these private sector buildings offer opportunities and services that can greatly enhance the quality of life of persons with disabilities. Where there are no state or local laws governing private buildings, there is no legal requirement for barriers to be removed.

Communication barriers have only recently begun to receive adequate attention. For example, where positions require the use of telephones or computers, persons with hearing, visual, or other sensory disabilities experience significant communication barriers to employment unless there is some form of accommodation. Both federal and state laws could be stronger in specifying the removal of communications barriers where technologically feasible. Still another problem relates to the housing market, where persons with disabilities often face difficulties locating homes free of architectural barriers.

It is interesting to note that some new disability rights policies are under consideration. The most significant proposal calls for the Congress to enact the "Americans with Disabilities Act," which would ban public and private sector discrimination against disabled persons in employment, transportation, public accommodations, and communications.[2] If passed, this legislation would expand disability rights protections from recipients of federal funds and contractors to a large portion of the private sector. At the present time, various states are also reexamining disability rights laws, usually with the expectation that nondiscrimination provisions will be clarified and expanded.

INTERGOVERNMENTAL ISSUES IN REGULATORY COMPLIANCE

The question of whether the federal government practices what it preaches suggests that there is a tension within the intergovernmental system. Such tension was articulated rather forcefully by a state government official who responded to our mail survey. In this official's words:

> The federal government issues mandates and policies on disability and access assistance, yet exempts itself—as a result, state and local governments take the stand, why comply? Have the feds put their actions where their mouth is? Let them do so, and then we'll follow. Military bases do not provide access, social security administration offices fight until forced to do so, but on the

other hand, local veterans administration offices and hospitals bend over backwards to make sure accessibility is present, as do the federal courts.

Expressed here is the long-standing question concerning parallel mandates activated by the federal government: "Why should we comply if the mandator does not comply?" Clearly, not all state officials share this view. Its articulation by state officials, however, is not uncommon.

Perhaps *the most striking factor here is that the pursuit of regulatory mandates, where they are roughly parallel, is characterized more by isolation than by any sense of partnership.* After all, many states have mandates that resemble or go beyond those of the federal government for recipients of federal funds. Certainly, state laws do not spell out a completely congruent approach to enhancing employment opportunities for persons with disabilities or removing architectural barriers, and many of the approaches in state law differ from federal mandate strategies. Nonetheless, there is probably more congruence between federal and state policy objectives than is generally recognized.

The creation of new mandates sometimes causes state and local officials to resent the federal government's intrusion into local affairs and the costs that are incurred through compliance. This being the case, it appears that these tensions have prevented many parties from recognizing a common interest in achieving the goals of disability rights mandates.

An enhanced sense of partnership and a reduction in intergovernmental isolation are likely to enhance effective implementation of disability rights policies and, for that matter, other parallel regulatory mandates. One valuable resource that this study has tried to tap is experiences with various implementation plans, programs, and strategies. Many different types of actions have been tried; some have worked better than others.

The *sharing of information* would seem a very valuable outcome of a new partnership in implementing disability rights. Effective information sharing, however, requires a degree of trust among the various intergovernmental actors. Officials are often reluctant to admit implementation problems or failed strategies, especially where they fear the consequences of performance difficulties. If a degree of trust can be created through a renewed intergovernmental partnership, then a more honest and valuable communication exchange might be achieved. Successful strategies and initiatives can be championed throughout the system. Programs that are ineffective or harmful in some unanticipated fashion can serve as warnings to others.

One final and important issue is the cost of compliance. From the state and local perspective, compliance costs can represent real burdens on limited revenue systems. To be sure, reports on compliance costs are sometimes inflated and exaggerated as part of the political rhetoric that surrounds regulatory mandates. It is clear, however, that regulatory mandates can, and often do, impose real costs on state and local governments.

A key point of contention is that the federal government has not consistently provided funding to subsidize regulatory mandates. While the Congress has appropriated some funds to help defray the costs of educating handicapped children, it has not provided money to implement program accessibility and reasonable accommodation in employment mandates. The federal government's approach in "mandating but not appropriating" clearly has produced tensions in the intergovernmental system. The federal government has not consistently been sensitive to the cost issue, being willing to create new mandates with tight compliance deadlines.

Greater sensitivity by the federal government to the cost implications of its regulatory mandates for state and local governments is warranted. Such sensitivity does not mean that regulatory mandates must cease. Instead, it implies that the federal government should consider these costs when fashioning remedies, setting compliance deadlines, and making decisions about the funding of mandates. Certainly in the current period of federal budget deficits, the federal government cannot pick up the full tab for implementing regulatory mandates. However, it may be possible for the Congress to provide some funding, create other incentive programs, and work more closely with state and local governments in developing a partnership for pursuit of regulatory mandates.

A recent report on the "American Agenda," written for newly elected President George Bush by a bipartisan task force, made a similar point with regard to the costs of regulatory mandates:

> Federal mandates should be done with close state and local cooperation, and where possible, should be accompanied by funding sources . . . funding, even if at lower levels in a period of limits, must be consistent so that states and localities can efficiently adjust, and should be flexible enough to permit incentives for innovation and tailoring to their particular needs.[3]

The task force also urged that state and local officials be involved in the early stages of policy development so that future policies will reflect state and local needs and capabilities more adequately.

IMPEDIMENTS TO COMPLIANCE: WHAT WE'VE LEARNED

Through data collected from several sources, this project has attempted to identify obstacles that are

being encountered as federal and state agencies seek to comply with disability rights mandates covering employment and barrier removal. Often, our sources relied on the first-hand experiences of federal and state officials who oversee disability-related programs and representatives of advocacy groups who work on behalf of persons with disabilities. At this point, it is useful to reflect on compliance problems that have been reported and to compare these to the influences on compliance identified in Chapter 5.

The Persistent Influence of Attitudes

All of the evidence gathered by this project has consistently identified attitudinal barriers as potent obstacles to advancing the rights and opportunities of persons with disabilities. This is not a new finding, but the persistent impact of negative attitudes suggests the need for even greater initiatives and incentives to overcome them.

More precisely, several types of attitudinal factors have been identified as harming implementation efforts. First, there is the long-standing failure of the general public to understand the life situations, needs, and, most importantly, capabilities of citizens who have disabilities. This is the pervasive backdrop against which regulatory mandates are carried out. Other attitudes are more specific to individual policy areas. In terms of employment, the misconceptions of employers about the performance abilities of workers with disabilities and the possible costs of reasonable accommodation blunt efforts to pursue these mandates. In the context of accessibility, there is a failure on the part of many inside and outside of government to recognize how design features and physical structures work to deny certain Americans access to basic services and opportunities.

Cost Issues: Real and Illusory

In some contexts, measures to enhance employment or achieve accessibility entail real costs; there is no way around these costs. Usually, such costs are far outweighed by the greater opportunities afforded to persons with disabilities. Also, modifications to enhance employment and accessibility may generate other savings or benefits for an agency.

Data gathered from multiple sources for this study have documented that costs can impede effective compliance with mandates to increase the employment opportunities for persons with disabilities. Insufficient funds to conduct effective recruiting efforts and provide assistive devices to sensory impaired persons are two examples. For barrier removal, the cost issue focuses on removal in existing buildings. Sometimes, with creative thinking, barriers can be removed or overcome with low expenditures; in cases of fundamental structural elements, accessibility carries a higher price.

As often as costs have represented real obstacles to be overcome in removing barriers, false perceptions about costs have obstructed efforts to comply with disability rights mandates or have been used as justification for inaction. In the employment area, there is widespread belief that reasonable accommodations will normally entail substantial expenditures. This is not the case, according to handicapped-program managers, but it is a common perception. Similar beliefs have impeded the removal of barriers in existing buildings.

Probably *the most damaging impact of these perceptions about costs is that they work to discourage creativity, imagination, and cooperation in efforts to eliminate barriers to employment or facility access.* As agencies have sought to comply with mandates, a few have demonstrated remarkable examples of programs and accommodations that have overcome major obstacles and, at the same time, been cost effective. Advances in rehabilitation technology are promising in this regard.[4] The solution to the problem of cost perceptions, to the extent it exists, rests with educational efforts that hit the issue head on.

Commitment and Leadership

Data gathered from interviews with program managers and advocacy organizations at the national level, as well as from the mail survey of state officials and advocacy group representatives, indicate that the support of public leaders and top administrators is an effective means of moving the implementation of disability rights forward. When public leaders go on record as supporting these mandates—through public statements or management directives—agencies seem to be more diligent in pursuing implementation. Such statements of support increase awareness within public agencies of disability-related issues and mandates, and signal that top leaders have expectations about performance in these areas.

Fragmentation of Responsibility for Implementation

Among the potential influences on compliance identified earlier in this report was the division of responsibility for enforcing mandates across multiple government agencies. In the federal government, the EEOC has articulated management directives concerning implementation of section 501 of the *Rehabilitation Act of 1973*. At the headquarters level, there seems to be little fragmentation of implementation authority. According to EEOC's on-site reviews of field installations, however, there are some problems with coordination of responsibilities. In the states, division of implementation responsibilities across agencies was ranked by only about a third of the respondents as a serious impediment.

With architectural accessibility policy, however, the issue of divided responsibility seems more rele-

vant. For the federal government, the ATBCB plays a leadership role that is shared with four standard-setting agencies and a few other agencies. This division of responsibilities has sometimes resulted in policy inconsistencies and has made it confusing for persons to obtain accessibility information or to lodge complaints. Still, it is not clear that such division is a substantial obstacle. Within the states, division of enforcement responsibility was not ranked as one of the most serious impediments to policy implementation.

Communications Problems

Interviews with handicapped-program managers indicate that within some federal agencies, communications networks have not been adequately developed. The EEOC also made this point. It was found that, in some agencies, EEOC's section 501 management directives had not been implemented effectively because some internal units had not received and/or were not aware of the directives. Without effective communication of guidelines and directives for implementation, it is unlikely that there will be effective implementation practices.

The ACIR project found little evidence that either federal or state agencies regularly engage in communication or discussion concerning implementation of disability rights mandates. Agency activities are conducted more in isolation than through open partnerships among agencies. For this reason, practices and strategies that have proved effective for one agency are often not immediately communicated to other agencies. The gulf between the federal and state governments appears even wider. There is little indication that either side has an accurate perception of what the other is achieving with regard to compliance with disability rights mandates.

Agency Sizes, Resources, and Autonomy

It was postulated earlier in this report that the diligence with which agency mandates are pursued may be directly related to the extent to which the mandates impinge on autonomy and consume resources. For the most part, the evidence does not indicate that many agencies see disability rights mandates as directly harming or threatening their central missions. There is, however, some evidence to suggest that agencies view disability rights mandates as just one of several with which they must comply.

Because they have greater financial and human resources, it might be expected that larger agencies would have more flexibility and autonomy than smaller ones in complying with regulatory mandates, and higher achievement levels. The study findings do not demonstrate a clear pattern with regard to the relationship between agency size and performance. In the federal government, the best and the worst performances in employment of disabled persons are found in smaller agencies. The evidence of this study suggests that other factors, including the congruence of mandates with agency missions and the support of top leadership, have a greater impact on performance than does agency size.

Urgency and Competition with Other Policies

It was postulated in Chapter 5 that compliance with regulatory mandates might be enhanced where decisionmakers and administrators see achievement of regulatory objectives as being urgent or imperative. A major environmental disaster, for example, typically creates expectations of fast and immediate governmental response. There is little indication from discussions with handicapped-program managers in federal agencies or from the responses of state officials in the mail survey that governments at any level see disability rights mandates as an urgent priority. This does not mean that agency officials consistently see disability rights mandates as unimportant. It does mean that such mandates represent one among a number of administrative responsibilities of agencies, with disability rights typically being neither at the bottom nor the top of priorities. Urgency does not appear to be a strong and positive influence on compliance.

Findings from this study indicate that disability rights mandates are competing with several other public policies for agency attention and resources. National advocacy groups, for example, noted that disability rights compete with other civil rights mandates in federal offices charged with equal employment opportunity programs.

Data gathered through the mail survey of state officials and advocates bear directly on the question of competition among different public policies. For both employment protection and barrier removal mandates, substantial proportions of both state officials and representatives of advocacy groups rated "other policy issues being more important in the state" as serious impediments to implementation (see Tables 6-11 and 7-6).

Congruence of Agency Mission with Disability Rights Mandates

Some analysts have argued that the greater the congruence between an agency's central mission and a given regulatory mandate, the greater the compliance level. One source of evidence on this point is the employment of persons with disabilities by different federal agencies. It was found that agencies that regularly serve disabled individuals as a central part of their mission employ a higher percentage of handicapped workers than the governmentwide average. This provides preliminary support for the proposition that congruence of mission and mandate enhances compliance.

RECONSIDERING APPROACHES TO INTRAGOVERNMENTAL REGULATION

Two approaches were described in Chapter 5 for enforcing compliance with regulatory mandates in the same level of government. One approach is the "coordinating" model, in which each agency is expected to formulate its own regulations and strategies for implementing regulatory mandates. Often, one agency is given "coordination responsibility," for the regulations and compliance activities of other agencies. A second approach is the "directing" model. Here, one agency is given central responsibility for designing regulations and directives for policy implementation. In both cases, each agency has important responsibilities. The principal difference between the approaches concerns who promulgates administrative regulations and oversees regulatory compliance.

The "directing" model is used for implementing the federal government's mandate to take affirmative action to employ persons with disabilities. The EEOC has issued administrative regulations and management directives for implementation of section 501 of the *Rehabilitation Act of 1973.* This agency also regularly gathers and disseminates information on the performance of the federal government in employing persons with disabilities. The "coordinating" model is used for implementation of the *Architectural Barriers Act* and section 504 of the *Rehabilitation Act of 1973.* In both cases, multiple agencies are involved in promulgating regulations. For the barriers act, four standard-setting agencies are charged with promulgating regulations in coordination with standards set by the Architectural and Transportation Barriers Compliance Board. In the case of section 504, each federal agency promulgates two sets of regulations, one for recipients of federal funds through the agency and the other for programs conducted by the agency itself. The Department of Justice currently has responsibility for coordinating section 504 implementation throughout the federal government.

Evidence from this study suggests that the directing approach is relatively more useful in moving compliance forward effectively and expeditiously. One of the factors that has slowed implementation of disability rights mandates has been the protracted process of designing and promulgating administrative regulations. The development of regulations and implementation strategies has proceeded far more expeditiously in the case of section 501 employment programs, primarily because only one agency—the Equal Employment Opportunity Commission—was charged with creating regulations.[5] A different pattern has emerged with regard to section 504 and the *Architectural Barriers Act,* where protracted rulemaking slowed the process of implementation.

The EEOC, as prime administrator of section 501 programs, has also been very effective in gathering and reporting performance information. This type of information dissemination has not been undertaken for other disability rights mandates either by central coordinating bodies—the ATBCB or the Department of Justice—or by individual agencies regarding implementation of the barriers law or section 504.

QUESTIONS AND ISSUES FOR FUTURE RESEARCH

Systematic exploration of the impact of regulatory mandates on the intergovernmental system has begun only recently. This study has explored the actions and performance of the federal and state governments with regard to compliance with disability rights mandates. It is appropriate to consider issues and questions for future studies of regulatory mandates. Among those that might be examined in other policy contexts are the following:

1. To what extent does the federal government comply with regulatory mandate policy it places on state and local governments?
2. What are the costs of federal regulatory mandates and to what extent do these costs represent substantial burdens to state and local governments?
3. How do different approaches to intragovernmental regulation—including the "directing" and "coordinating" models—affect compliance with regulatory mandates?
4. To what extent do state and local laws create regulatory mandates similar to those set by the federal government? In what ways do federal, state, and local mandates vary?
5. What impact does the support of agency leadership and elected officials have on compliance with regulatory mandates?
6. How do organizational variables such as agency size, resources, and autonomy affect compliance?
7. To what extent is there a partnership among the federal, state, and local governments in pursuing regulatory mandates? To what extent do they share financial resources, expertise, or implementation experiences?

IMPLEMENTATION OF DISABILITY RIGHTS: TOWARD THE FUTURE

After years of protracted debates about strategies to implement disability rights mandates, the focus on barrier removal and employment opportunities has now moved substantially out of na-

tional policymaking circles and into the agencies of federal, state, and local governments. At this time, with regulations and policies largely in place, the pace of implementation and achievement of regulatory mandates is being determined by decisions made in the field by thousands of public officials. It is these officials who are making decisions about hiring and promoting persons with disabilities and about the design and renovation of public government buildings and facilities.

Findings from this study document that actions are being taken and obstacles are being encountered. This report has identified these obstacles and will make some recommendations about how their impact might be alleviated. These recommendations are intended to stimulate policymakers in all jurisdictions to think about means to enhance the implementation of disability rights policies.

Perhaps the greatest disappointment, so far, has been the failure of the nation to embrace more fully the mandates to remove barriers to accessibility and increase the employment opportunities of persons with disabilities. This failure is undoubtedly rooted in ingrained attitudes that cause some Americans to overlook the needs and capabilities of other Americans. More significantly, this failure to pursue a common attack on barriers which reduce the opportunities of persons with disabilities is evident in the relationship among governments in the federal system.

Despite relatively common objectives in federal and state policies, intergovernmental relations in the context of disability rights mandates are somewhat strained. These strains are unfortunate because they likely impair the overall effort to achieve disability rights objectives. Such strains have resulted in a lack of sharing important information about implementation strategies and experiences. Also, fiscal and personnel resources, unquestionably limited, are not marshalled as effectively as they might be to achieve regulatory mandates because of isolation between governmental units.

One of the most important new objectives that might be undertaken to enhance the lives of individuals with disabilities would be the renewal of an intergovernmental partnership that stresses common commitment to removing barriers to buildings and employment. Such a partnership need not cost a penny in new expenditures, but could stimulate creative energies more fully and spread social learning about implementation practices. A renewed federal-state-local partnership offers hope for a new round of effort to enhance movement toward the objective of an America with no barriers and with full employment opportunities for its disabled citizens.

NOTES

[1] International Center for the Disabled, *The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream* (New York: ICD, 1986), p. 1.

[2] See U.S. Senate, Committee on Labor and Human Resources, Subcommittee on the Handicapped, and U.S. House of Representatives, Committee on Education and Labor, Subcommittee on Select Education, *Joint Hearings on the Americans with Disabilities Act of 1988* (100 Cong., 2nd Sess., September 27, 1988); and Julie Kosterlitz, "Joining Forces," *National Journal*, January 28, 1989.

[3] *American Agenda, Report to the Forty-First President of the United States.* The report was prepared by a committee chaired by former Presidents Gerald R. Ford and Jimmy Carter and was funded by a grant from the Times Mirror Company.

[4] For an interesting discussion of rehabilitation technology see Sandra J. Tanenbaum, *Engineering Disability: Public Policy and Compensatory Technology* (Philadelphia: Temple University Press, 1986).

[5] Originally, responsibility for implementing section 501 was given to the U.S. Civil Service Commission. It was transferred to the EEOC through an executive order signed by President Jimmy Carter.

Appendix A

State Laws Providing Employment Protections for Persons with Disabilities

This appendix lists information on state statutes regarding employment protections for persons with disabilities.

The ***first column*** lists the state and the relevant legal citation(s).

The ***second column*** describes the forms of disabilities that are protected under state law.

The ***third column*** describes the types of employment and/or employers that are covered by state laws providing employment protections to persons with disabilities.

The ***fourth column*** provides explanatory notes about the nature of the employment protection statute. The phrase "*statement of state policy*" means that the statute simply contains language that it is the policy of the state government to hire and promote in employment persons with disabilities. Such provisions lack the legal strength of the stronger antidiscrimination statutes. The phrase "*White Cane provision*" means that the statement of state policy is included in the state statute in close proximity to provisions for blind persons, namely their sole right to use white canes and their right to take seeing-eye dogs into public places and facilities.

State and Legal Citation	Protected Condition	Employment Covered	Explanatory Notes
Alabama Code 21-7-8	Physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Alaska Stat. 18.80.220 (Cum. Supp. 1987)	Physical handicap	Public employers and private employers with one or more employees, except some private and religious associations	
Alaska Stat. Ann. 47.80.010	Physical or mental handicap	Publicly funded employment	
Arizona Stat. 41-1463	Physical handicap, except impairment caused by drugs or alcohol	Public and private employers with 15 or more employees, except the U.S. government and some private associations	
Arizona Stat. 36-506	Person evaluated or treated by agency for mental disorder	Employment generally	Statement of state policy
Arkansas Code Ann. 20-14-301	Visual handicap, hearing impairment, other physical disability	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
California Cal. Govt. Code 12940 (1988 Supp.)	Physical or medical condition	Public employers and private employers with five or more employees, except some religious associations and nonprofit corporations	
California Cal. Govt. Code 54.5	Blind, visual handicap, other physical handicap	Economic life of state	Statement of state policy: White Cane provision
Colorado Rev. Stat. 24-34-402 (Cum. Supp. 1987)	Physical handicap	Public employment by state and its political subdivisions and private employers, except religious organizations	
Colorado Rev. Stat. 24-34-801	Blind, visual handicap, other physical handicap	Economic life of state	Statement of state policy: White Cane provision
Connecticut Gen. Stat. Ann. 46a-60	Physical handicap, mental disorder, mental retardation	Public employment by state and its political subdivisions and private employers with three or more employees	
Delaware Code Title 16, Sect. 9501	Blind, visual handicap, other physical handicap	Public employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
DC (Washington) Code 1-2512	Physical or mental disablement	All employers except those employing family members or domestic workers	
DC (Washington) Code 6-1705	Blind, visual handicap, other physical handicap	Firms doing business in the District; government agencies	Statement of state policy: White Cane provision

Florida Stat. Ann. 760.10	Physical handicap	Public and private employers with 15 or more employees	
Florida Stat. Ann. 413.20	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Georgia Code Ann. 34-6A-4	Person who has mental or physical impairment and has a record of such impairment that limits one or more major functions, excluding users of drugs or controlled substances	Public or private employer in the state with 15 or more employers	
Georgia Code Ann. 45-19-21	Mental or physical impairment that limits one or more major functions	Public employment in the state	
Hawaii Rev. Stat. Title 21, Chap. 378	Physical handicap that is expected to continue through lifetime	Public employers and private employers with one or more employees, excluding U.S. government	
Idaho Title 56-707	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Illinois Ann. Stat. 68-2-102 (1987 Supp.)	Physical or mental handicap	Persons with one or more employees when a complainant alleges civil rights violation due to unlawful discrimination based on mental or physical handicap unrelated to ability	
Illinois Ann. Stat. 23-3363 (1987 Supp.)	Physical disability	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Indiana Code Ann. 22-9-1-2	Physical or mental condition that constitutes a substantial disability	Employment by state and its political subdivisions plus employers with six or more employees, except social clubs and religious organizations	
Indiana Code Ann. 4-15-12-2	Physical or mental handicap	Employees of state agencies	
Indiana Code. Ann. 16-7-5-6	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Iowa Code Ann. 601A.6	Physical or mental condition that represents a substantial handicap	Employment by state and its political subdivisions plus employers with four or more employees, except family members, personal services to employer, some religious organizations	
Iowa Code Ann. 601D.2	Blind, visual handicap, other physical handicap	Employees in service of state, its political subdivisions and state-supported employment	Statement of state policy: White Cane provision

State and Legal Citation	Protected Condition	Employment Covered	Explanatory Notes
Kansas Stat. Ann. 44-1009	Physical handicap	Public employers and private employers with four or more employees, except certain private associations	
Kansas Stat. Ann. 39-1105	Physical handicap	Employment by state and its political subdivisions plus state-supported employment	Statement of state policy: White Cane provision
Kentucky Rev. Stat. 207.150	Physical handicap	Public employers and private employers with eight or more employees	
Louisiana Rev. Stat. 46-2254	Person who has, has a record of, or is regarded as having a physical or psychological disorder or retardation that limits one or more major functions	Public employers and private employers with 15 or more employees	
Louisiana Rev. Stat. 46-1951	Blind, visual handicap, other physical handicap	Employees of state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Maine Rev. Stat. Ann. 5-4572	Physical or mental handicap	All employers in the state, excluding religious organizations and private associations	
Maine Rev. Stat. Ann. 17-1316	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Maine Rev. Stat. Ann. 5-783; 5-784	Physical handicap	Officials appointed by the state, state agencies in providing services, and contractors with state agencies	Statement of state policy of nondiscrimination; affirmative action requirement
Maryland Ann. Code 49B-16	Physical or mental handicap	Public and private employers with 15 or more employees, except some private associations	
Maryland Ann. Code 30-33	Blind, visual handicap, deaf, hearing-impaired	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Massachusetts Ann. Laws 151B-4 (1987 Supp.)	Person who has, has a record of, or is regarded as having a mental or physical impairment that limits one or more major functions	Public employers and private employers with six or more employees, except private associations and religious organizations	
Michigan Laws Ann. 37.1202	Physical or mental handicap	Public employers and private employers with four or more employees	

Minnesota Stat. Ann. 363.03 (1988 Supp.)	Person who has, has a record of, or is regarded as having a mental or physical impairment that limits one or more major activities	Public employers and private employers with one or more employees, except family members and religious organizations	
Minnesota Stat. Ann. 256C.01	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Mississippi Code Ann. 25-9-149 (1987 Supp.)	Physical handicap	Employment by state government	
Mississippi Code Ann. 43-6-15	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Missouri Ann. Stat. 213.055; 213.070 (1988 Supp.)	Mental or physical impairment that substantially limits one or more major activities; condition with or without reasonable accommodation does not interfere with performance of job	Public employers and private employers with six or more employees, except religious organizations	
Missouri Ann. Stat. 209.180	Blind and visually handicapped	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Montana Code Ann. 49-2-303	Physical or mental handicap	Public and private employers with one or more employees, except certain private associations and religious organizations	
Montana Code Ann. 49-4-101	Physical handicap	Employment generally	Statement of general nondiscrimination policy
Montana Code Ann. 49-2-202	Physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Nebraska Rev. Stat. 48-1104	Physical or mental handicap	Employment by the state and its political subdivisions; persons employed in industry by employer with 15 or more employees, except U.S. government, Indian tribes and private associations	
Nebraska Rev. Stat. 20-131	Physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Nevada Rev. Stat. Ann. 613.330	Physical, aural or visual handicap	Public or private employers with 15 or more employees, excluding U.S. government, Indian tribes, and some private and religious associations	

State and Legal Citation	Protected Condition	Employment Covered	Explanatory Notes
New Hampshire Rev. Stat. Ann. 354-A:8	Physical or mental handicap	Public and private employers with six or more employees, except some private and religious associations	
New Hampshire Rev. Stat. Ann. 167-C:5	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
New Jersey Stat. Ann. 10:5-4.1 (1987 Supp.)	Physical or mental handicap	Public and private employment, excluding employment of family members	
New Jersey Stat. Ann. 10:5-29.1 (1987 Supp.)	Handicap, blindness, deafness	Employment generally	Statement of state policy: White Cane provision
New Mexico Stat. Ann. 28-1-7	Person who has a physical or mental handicap or mental condition that limits one or more major functions, has a record of such impairment, or is regarded as having such impairment	Public and private employers with four or more persons	
New Mexico Stat. Ann. 28-7-7	Blind, visual handicap, other physical disability	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
New York Executive Law Sect. 296 (1988 Supp.)	Person who has a physical, mental or medical impairment, has a record of such impairment or is regarded as having such impairment	Public and private employers with four or more employees	
New York Civil Rights Law Sec. 47-a (1988 Supp.)	Person with disability	Employment by state and its political subdivisions and any other category of employment	Statement of state policy: White Cane provision
North Carolina Gen. Stat. 168A-5	Person who has a mental or physical impairment that substantially limits one or more major functions, has a record of such impairment, or is regarded as having such impairment	Public and private employers with 15 or more employees, excluding employees hired as farm or domestic workers	

North Carolina Gen. Stat. 126-16	Person who has a mental or physical impairment that substantially limits one or more major functions, has a record of such impairment, or is regarded as having such impairment	Employment by the state and its political subdivisions	Statement of state equal employment opportunity policy
North Carolina Gen. Stat. 143-422.2	Handicap	Employment by the state	Statement of state policy: White Cane provision
North Dakota Code 14-02.4 (1987 Supp.)	Physical or mental handicap	Public and private employers with 10 or more employees	
North Dakota Code 25-13-05	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Ohio Rev. Code Ann. 4112	Medically diagnosed, abnormal condition that is expected to continue for considerable length of time and that can be reasonably expected to limit the person's functional ability	Public employers and private employers with four or more employees	
Ohio Rev. Code Ann. 153.59	Handicap	Employers contracting with state or its political subdivisions for construction, alteration, or repair of a public building or public work in the state	
Oklahoma Stat. Ann. 25-1302	Person with physical or mental impairment that limits one or more major functions, has a record of such impairment, or is regarding as having such impairment	Public employer and private employers with 15 or more employees, including contractors for the state or its political subdivisions, but excluding Indian tribes, nonprofit organizations	
Oregon Rev. Stat. 659.400	Person with physical or mental impairment that limits one or more major functions, has a record of such impairment, or is regarding as having such impairment	Public and private employers with six or more persons, except Oregon National Guard	
Pennsylvania 43 P.S.-955 (1986 Supp.)	Handicap or disability that does not substantially interfere with ability to perform essential function of employment	Public employers and private employers with four or more employees, excluding some private associations	

State and Legal Citation	Protected Condition	Employment Covered	Explanatory Notes
Rhode Island Gen. Laws 28-5-7	Person with physical or mental impairment that limits one or more major functions, has a record of such impairment, or is regarding as having such impairment	Public employers and private employers with four or more employees except some religious organizations and employment of family members	
Rhode Island Gen. Laws 40-9.1-1	Blind, deaf, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
South Carolina Code 43-33-530	Physical or mental handicap impairment verified by medical finding and reasonably certain to continue through person's lifetime, excluding active drug, alcohol, and narcotic users (mental impairment is not mental illness)	Public and private employers	
South Carolina Code 43-33-60	Blind, visual handicap, other physical impairment	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
South Dakota Cod. Laws 20-13-10	Physical and mental disability	Public and private employers	
South Dakota Cod. Laws 3-6A-15	Physical disability	State employment	Statement of general nondiscrimination policy
Tennessee Code Ann. 8-50-103 (1987 Supp.)	Physical and mental handicap, visual handicap	Public and private employers	
Texas Code Ann. Tit. 8, Ch. 121.003	Physical or mental handicap	Employment by state and its political subdivisions and state-supported employment	Statement of general policy: White Cane provision
Texas Civil Stat. 5521K	Physical or mental handicap	Public employers and private employers with 15 or more employees	
Texas Civil Stat. 5547-300 (1988 Supp.)	Mental retardation	Public and private employers	Requirement for equal employment opportunity
Utah Code Ann. 34-35-6 (1987 Supp.)	Mental or physical impairment that limits one or more major functions	Public employers and private employers with 15 or more employees, except some religious associations	

Utah Code Ann. 26-30-3	Blind, visual handicap, other physical handicap	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Vermont Stat. Ann. 21-495 (1987 Supp.)	Physical or mental impairment, excluding current users of drugs or alcohol, that prevents performance of work duties or threatens safety of others	Public and private employers	
Virginia Code 51.01-41	Person with physical or mental impairment that limits one or more major functions or has a record of such impairment	Public and private employers	
Virginia Code 51.01-41	Person with physical or mental impairment that limits one or more major functions or has a record of such impairment	Employment by state and its political subdivisions and state-supported employment	Statement of state policy
Virginia 2.1-718	Person with disability	Employment generally	Statement of general nondiscrimination policy
Washington Rev. Code Ann. 49.60.180 (1988 Supp.)	Sensory, physical, or mental handicap	Public and private employers with eight or more employees	
Washington Rev. Code Ann. 70.84.080 (1988 Supp.)	Blind, physical, or mental impairment that limits one or more major activities	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
West Virginia Code 5-11-9	Blind, physical, or mental impairment that limits one or more major activities	Public employers and private employers with 12 or more employees, excluding private clubs and employment of family members	
West Virginia Code 5-15-7	Blind person	Employment by state and its political subdivisions and state-supported employment	Statement of state policy: White Cane provision
Wisconsin Stat. Ann. 111.331; 111.332 (1987 Supp.)	Person with physical or mental impairment that limits one or more major functions, has a record of such impairment, or is regarding as having such impairment	Public employers and private employers with one or more employees, except social clubs and fraternities	
Wyoming Stat. Ann. 27-9-105	Handicapped person capable of performing particular job	Public employers and private employers with two or more employees, except some religious associations	

Appendix B

State Laws Concerning Removal of Architectural Barriers in Buildings and Facilities

The following table presents information from state statutes regarding the removal of physical barriers to enhance access to public buildings and facilities by persons with disabilities.

The ***first column*** lists the state and the legal citation(s).

The ***second column*** describes what buildings and facilities within the state are covered by barrier removal laws.

The ***third column*** describes the content of state statutes with regard to (1) accessibility standards to be applied in barrier removal and (2) what state agency, if any, is charged with promulgating accessibility standards.

Special notes on interpreting the third column:

If the word "statute" appears in this column, then there is within the statute(s) of the state some actual description of accessibility standards.

The phrase ANSI means that the statute(s) makes explicit reference to the accessibility guidelines developed by the American National Standards Institute, most often the 1980 version (A117.1).

The phrase "standards set by state agency" means that the statute(s) designate one or more agencies of state government to promulgate accessibility standards. In all cases, the relevant state agency(ies) are listed.

The term "Uniform Federal Accessibility Standards" refers to the standards set by the General Services Administration, the departments of Defense and Housing and Urban Development, and the U.S. Postal Service per their responsibilities in implementing the *Architectural Barriers Act of 1968*, as amended.

The term "Minimum Federal Requirements for Accessible Design" refers to accessibility standards set by the U.S. Architectural and Transportation Barriers Compliance Board per its responsibilities in implementing Section 502 of the *Rehabiliation Act of 1973*, as amended.

State and Legal Citation	Buildings and Facilities Covered	Accessibility Standard Employed
Alabama Code 21-4-4 to 21-4-7 (1987 Supp.)	Buildings and facilities used by the public and constructed with state, county, or municipal funds, or other political subdivisions of the state	ANSI; standards set by state agency: State Fire Marshall
Alaska Stat. 35.10.015	Buildings and facilities constructed by the state and political subdivisions (including vessels)	Standards set by state agency: Department of Public Works
Arizona Stat. 34-403 (1987 Supp.)	Buildings and facilities used by the public that are constructed or undergo repairs and alterations with state funds or funds of political subdivisions of state; all establishments that cater to or offer their services to or solicit patronage from the public	ANSI; statute
Arkansas Code Ann. 20-14-301 to 20-14-305	Public buildings, public facilities, public housing, resort and other public areas to which the public is invited; housing offered for lease, sale, or compensation	Statute is statement of right to access and use; no standard set
California Cal. Govt. Code 4451 (1988 Supp)	All buildings and facilities intended for public use, which have any reasonable availability to or use by physically handicapped persons, including all facilities for education and instruction with are constructed with the use of state, county, or municipal funds or the funds of any political subdivision; buildings leased, contracted, or hired for periods in excess of 2 years by any of the above	Statute; standards set by state agency: State Architect; ANSI
Colorado Rev. Stat. 9-5-102 to 9-5-110	Buildings used by the public and built in whole or in part with use of state, county, or municipal funds, or funds of any political subdivision in the state or constructed with private funds	Statute
Connecticut Gen. Stat. Ann. 29-269 (1988 Supp.)	All buildings and building elements constructed under permits issued after effective date; all buildings constructed or substantially renovated by state and its political subdivisions after effective date	ANSI
Delaware Code 29-6917; 29-7303	Every public works contract awarded by state or any political subdivision thereof . . . for any public building in which public funds are involved. Also state leased property.	ANSI; statute
DC (Washington) Code 6-1703	Areas in public buildings open to and used by the general public and which are regulated by or under the control of the District government	Statute
Florida Stat. Ann. 255.21; 553.45 to 553.49	Buildings or facilities intended for use by the general public built or altered or operated as lessee by or on behalf of the state or any subdivision, municipality, or special district, thereof; all new buildings except single family dwellings and duplexes, in which the general public may frequent, live in, or work at	ANSI; standards set by state agency: Department of General Services
Georgia Code. Ann. 30-3-3 (1987 Supp.)	All buildings, structures, streets, sidewalks, walkways, and access used by the public or in which handicapped persons might be employed, including both those constructed, leased, or renovated in whole or in part with funds of the state and its political subdivisions and those constructed or renovated with private funds	ANSI

Hawaii Rev. Stat. Title 9, Sect. 103.50	Construction of public buildings and facilities by the state or any political subdivision thereof	ANSI
Idaho Code Title 39, Ch. 32	Buildings and facilities constructed by the state, any county, city, district, authority, board,or public corporation or entity which has any reasonable availability to, or usage by, physically handicapped persons, including educational and instructional facilities	ANSI
Illinois Ann. Stat. Ch. 111 1/2, Sect. 3711 to 3718 (1987 Supp.)	A building, structure, or improved area owned or leased by the state or its political subdivisions; a building, structure, or improved area used primarily by the public foreducation, recreation, employment, and other purposes	Standards set by state agency: Capital Development Board
Indiana Code Ann. 22-11-1-1; 22-11-1-17	Places of employment and public buildings used in whole or in part as places of resort, assemblage, lodges, trades, traffic, or occupancy	Standards set by state agency: Fire Prevention and Building Safety Commission
Iowa Code Ann. 104A	All public and private buildings and facilities, temporary or permanent, used by the general public	Statute; standards set by state agency: State Building Code Commission
Kansas Stat. Ann. 58-1301	Any government building or facility used by the public or in which physically handicapped persons might be employed that is constructed or leased with funds of the state or its political subdivisions; any buildings used by the public in which physically handicapped persons might be employed which is constructed or leased with private funds, including lodgings with 20 units or more	ANSI; standards set by state agency: Department of Administration
Kentucky Rev. Stat. 198B.260	All buildings except one and two family dwellings, historical structures, small business concerns	Standards set by state agency: Board of Housing, Building, and Construction
Louisiana Rev. Stat. 49-148; 40-1732 to 1734	All state owned buildings, educational institutions, and office buildings which are constructed, renovated, or remodeled in whole or in part with the use of state funds or the funds of any board, commission, agency or department (except school boards); building, structure, or improved area to which the general public customarily has access or utilizes for a number of specified purposes (except privately owned one and two family residences.	Statute; ANSI
Maine Rev. Stat. Ann. 25-2701 to 25-2704 (1987 Supp.)	Structure to which the public customarily has access and utilizes and which is constructed in whole or in part with funds of the state or its political subdivisions; a place where five persons or more will be employed; public housing funded by the state or federal government	Statute; ANSI
Maryland Art. 41, Sect. 11-402; Art. 78A, Sect. 51	Building structure or improved area owned or constructed for lease by the state or its political subdivisions, except penal institutions, parts of buildings not open to the general public or work force; areas used for gatherings or public amusement, such as public parks and recreation centers	Statute; ANSI; standards set by state agency: Department of Economic and Community Development; Department of Public Improvements

State and Legal Citation	Buildings and Facilities Covered	Accessibility Standard Employed
Massachusetts Laws Ann. 143-3W (1987. Supp.); 22-13A (1987 Supp.)	Buildings constructed by the commonwealth or any political subdivision thereof with public funds and open to public use; privately financed buildings open to and used by the public	Standards set by state agency: Architectural Barriers Board of Department of Public Safety
Michigan Laws Ann. 125.1351 to 125.1354	A building, structure, or improved area owned, leased, financed, rented by or on behalf of the state or its political subdivisions or with federal funds; a facility used by the public for purposes of education, employment, housing (other than private dwellings),transportation, and recreation	Standards set by state agency: Department of Management and Budget, Department of Labor, Department of Education
Minnesota Stat. Ann. 471.466; 16B.61	Any building and grounds appurtenant within a city, township, or governmental subdivision, except farm dwellings and single and two family dwellings	Standards set by state agency: Department of Administration
Mississippi Code Ann. 43-6-101 to 43-6-109 (1987 Supp.)	All buildings of assembly, educational institutions, and office buildings and other public buildings which are constructed in whole or in part with the use of state, county, or municipal funds, or the funds of any instrumentality of the state	Statute; ANSI; Uniform Federal Accessibility Standards
Missouri Ann. Stat. 8.610 to 8.621	Buildings and facilities for public use and assembly which are constructed in whole or in part with the use of state funds or funds of its political subdivisions	Statute
Montana Code Ann. 50-60-201	New buildings constructed with public funds	Uniform Federal Accessibility Standards
Nebraska Rev. Stat. Ann. 72-1011 to 72-1119	Buildings and facilities used by the public which are constructed or remodeled in whole or in part with the use of state, county or municipal funds, or the funds of any political subdivision of the state; all buildings where the public is invited to enter or remain upon the premises as business invitees	Statute
Nevada Rev. Stat. Ann. 338.180	Public buildings and facilities constructed by the state or by a political subdivision, district, authority, board, public corporation or entity of the state; public buildings and facilities constructed by a public corporation	Minimum Federal Requirements for Accessible Design, by U.S. Architectural and Transportation Barriers Compliance Board
New Hampshire Rev. Stat. Ann. 275-C:10 to 275-C:18	Buildings, facilities, and appurtenant grounds and curbs that are used by the state or by a political subdivision, district, authority, board, public corporation, or entity of the state	Standards set by state agency: Committee for Barrier Free Design of the Governor's Commission for the Handicapped
New Jersey Stat. Ann. 52:32-4 to 52:32-16	Any building, structure, facility, or complex used by the general public and constructed by any state, county, or municipal government agency or instrumentality, or by any individual, partnership, association or company, except one to four family private residences, warehouse storage, and buildings classified as hazardous occupancies	Statute; standards set by state agency: Department of Community Affairs

New Mexico Stat. Ann. 60-13-44; 15-3-7	Public buildings constructed in the state through expenditure of state, county, or municipal funds; facilities leased or rented by state agencies	Standards set by state agency: General Construction Bureau
New York Public Buildings Law Sec. 50, 51; Transportation Law, Sect. 15-b	Any building or portion thereof (other than privately owned residential structure; public housing; and police, fire, or correction structures) constructed in whole or in part with state or municipal funds, which is likely to be used by physically handicapped persons, including business establishments; New York city transit system	Standards set by state agency: State Building Code Commission; New York City Transportation Disabled Committee
North Carolina Gen. Stat. 143-138	Public buildings generally (little explicit reference to accessibility for physically handicapped persons)	Standards set by state agency: Building Code Council
North Dakota Code 23-13-13; 48-02-19	All buildings and facilities used by the public; all public buildings and facilities constructed in whole or in part with funds of state or its political subdivisions, except institutions under the Board of Higher Education and areas of buildings not used for activities open to the general public	Statute; ANSI
Ohio Rev. Code Ann. 3781.111 (1987 Supp.)	All public buildings and facilities for which plans are submitted for building code approval	Statute: standards set by state agency: Board of Building Standards
Oklahoma Stat. Ann. 61-11 (1988 Supp.)	Public buildings erected by the state or any agency or political subdivision thereof, or any building erected with public funds	Standards presented in current issue of "Basic Building Code" approved by the Building Officials and Code Administrators International
Oregon Rev. Stat. Ann. 447.210 to 447.280; 267.240	All buildings and structures used by the public that are constructed, purchased, leased, or rented in whole or in part with the use of state, county, or municipal funds or the funds of any political subdivision of the state, and to the extent lawful, federal funds; all buildings and structures used by the public and constructed, purchased, or leased with private funds and having a ground area of more than 4,000 square feet and more than 20 feet high; facilities of mass transit districts	Statute; standards set by state agency: Department of Commerce (instructed by statute to consider ANSI); Design of Urban Mass Transit Administration for transitfacilities
Pennsylvania 71 P.S. 1455 (1987 Supp.)	All buildings of assembly, educational institutions, and office buildings constructed in whole or in part with the use of commonwealth funds or the funds of any instrumentality of the commonwealth or leased by the commonwealth or its instrumentalities; department stores, theatres, retail stores, sports arenas, and restaurants with sitdown dining with 2,800 square feet of more of floor space	Statute
Rhode Island Gen. Laws 23-27.3 109.1.4; 37-8-15	Buildings and facilities used by the public which are constructed in whole or in part with the use of state or municipal funds or funds of any political subdivision in the state; public buildings constructed by the state or any municipality of the state; any privately financed buildings that are open to and used by the public	Standards set by state agency: Building Code Standards Committee

State and Legal Citation	Buildings and Facilities Covered	Accessibility Standard Employed
South Carolina Code 10-5-210 to 10-5-330	Buildings, structures, streets, and sidewalks and access thereto used by the public or in which physically handicapped many be employed that are constructed, purchased, leased, rented in whole or in part with the use of state, county, or municipal funds or funds of any political subdivision of the state or with the use of private funds	ANSI; standards set by state agency: Board for Barrier-Free Design
South Dakota Cod. Laws 5-14-12 5-12-12	Buildings and facilities used by the public that are constructed in whole or in part with the use of state, county, or municipal funds or the funds of any political subdivision in the state	ANSI
Tennessee Code Ann. 68-18-201 to 68-18-205	Any building, structure, or improved area owned or leased by the state or its politicalsubdivisions or used primarily by the general public as a place of gathering or amusement	Standards set by state agency: State Building Commission, State Fire Marshall; statute (reference made to 1976 edition of "An Illustrated Handbook of the Handicapped" section of the North Carolina state building code
Texas Civil Stat. Art. 601b, Art. 7 (1988 Supp.)	All buildings and facilities used by the public that are constructed in whole or in part with the use of state, county or municipal funds or funds of any political subdivision; privately financed buildings constructed after the effective date in counties with populations greater than 45,000	ANSI; standards set by state agency: State Purchasing and General Services Commission
Utah Code Ann. 26-29-1 to 26-29-4	All buildings and facilities constructed or remodeled in whole or in part with the use of state, county, or municipal funds or the funds of any political subdivision; private individuals are encouraged (not required) to apply the standards	Standards set by state agency: State Building Board
Vermont Code Ann. 18-1321 to 18-1328 (1987 Supp.)	State, county, or municipal buildings, transportation facilities, school buildings, office buildings in which people are employed, stores or spaces where goods are offered for sale, other facilities, excluding family residences registered as day care facilities	ANSI
Virginia 2.1-514 to 2.1-521.1	Building or facility used by the public that is constructed in whole or in part or altered with the use of state, county, or municipal funds or funds of any political subdivisions of the state	Standards set by state agency: Division of Engineering and Buildings, State Board of Education
Washington Rev. Code Ann. 70.92.100 to 70.92.160	Buildings, structures, or portions thereof used primarily for Group A through Group H occupancies as defined in state building code	Standards set by state agency: Building Code Advisory Council
West Virginia Code 18-10F (1987 Supp.)	Building or facility the public has general access to and the ways of travel to and from the same, excluding some residential facilities, hazardous occupancies, and field service facilities warehouses,	ANSI; standards set by state agency: Structural Barriers Compliance Board
Wisconsin Stat. Ann. 101.13 101.01	Any place of employment or public building; any structure, including exterior parts of buildings, used in whole or in part as place of resort, assemblage, lodging, trade, traffic, occupancy or use by the public or three or more tenant	Statute; ANSI; standards set by state agency: Department of Industry, Labor, and Human Relations
Wyoming Stat. Ann. 35-13	Buildings for general public use built by the state or any governmental subdivision or any school district or other public administrative body within the state	ANSI; statute

Appendix C

Mail Survey Methodology and Research Instrument

Survey Purpose

The mail survey was designed to gather information on the implementation of disability rights mandates for equal employment opportunity and architectural barrier removal at the state level.

Selection of Respondents

Two sets of respondents were selected for this study, both of whom have extensive experience with disability issues and policies: (1) officials in state government who oversee or are involved with public programs to achieve architectural accessibility and/or enhance employment of persons with disabilities, and (2) representatives of state-level advocacy organizations for persons with disabilities.

State government respondents were identified in one of two ways:

1. Early in the study, ACIR project team members called government officials in all states in an effort to obtain data on employment of disabled persons in the state work force and on accessibility in state government buildings. In each state, team members called the state government's personnel office, the state vocational rehabilitation agency, and the governor's commission on employment of the handicapped. These calls often led to referrals to other state offices and agencies.
2. The project obtained a list of state affiliates of the President's Committee on Employment of People with Disabilities. Representatives of these affiliates were added to list of state government respondents.

Representatives of state-level advocacy groups were identified from publications that listed state organizations and from national advocacy organizations with state affiliates. Among the national organizations that provided lists of state affiliates were: Paralyzed Veterans of America, National Federation of the Blind, National Association for the Deaf, and the Epilepsy Foundation. In addition to these affiliates, many other state-level advocacy groups were identified through listings of state organizations provided in various publications concerning disability issues and policies.

Survey Administration

The ACIR survey for this project was developed during the spring and early summer of 1988 by the project director and staff at the Commission. It was pretested with officials in the Virginia Department of Rehabilitative Services and other selected persons. The survey was finalized in late June and distributed in the first mailing in July 1988. In order to improve the response rate, a second mailing of the survey was sent out in September 1988.

Sample Size and Response Rate

In the first mailing, the survey was sent to 711 persons—348 employed in state agencies and 363 representatives of state-level advocacy groups.

The response rate to the first mailing was somewhat disappointing. By late August, 58 surveys were returned by state officials and 78 by advocacy group representatives. This amounted to 136 responses for a response rate of 19%. Project staff decided that this response rate was too low and probably resulted from the fact that the survey was sent out during a peak vacation period.

Following a second mailing of the survey in early September, the response rate improved markedly. By mid-October, a total of 150 surveys from state officials and 142 surveys from state advocacy group representatives had been received. Thus, a total of 292 surveys were received as the result of the two mailings, representing a response rate of 41 percent, a rate considered respectable among social scientists.

Survey Instrument

Two mail surveys were prepared for this study, one for state officials and the other for representatives of state-level advocacy groups. The surveys were identical except for the cover page which explained the purpose of the survey and ACIR's mission. A copy of the survey is included in this appendix.

QUESTIONNAIRE

Federal, State, and Local Activity on Disability Policies: Removing Employment and Architectural Barriers

EMPLOYMENT

For the following questions, please circle the number of the response that best corresponds to your assessment of the situation.

	Very Effective				Not Very Effective	Don't Know
1. Overall, how effective has your state government been in *recruiting and hiring* persons with disabilities for state government jobs?	1	2	3	4	5	6
2. Overall, how effective has your state government been in *providing reasonable accommodations* in state government work places?	1	2	3	4	5	6
3. Overall, how effective have local governments in your state been in *recruiting and hiring* persons with disabilities for local government jobs?	1	2	3	4	5	6
4. Overall, how effective have local governments in your state been in *providing reasonable accommodations* in local government work places?	1	2	3	4	5	6
5. Overall, how effective has the federal government been in *recruiting and hiring* persons with disabilities for federal government jobs in your state?	1	2	3	4	5	6
6. Overall, how effective has the federal government been in *providing reasonable accommodations* in federal government work places in your state?	1	2	3	4	5	6

7. How would you describe the level of funding provided to your state (and local governments) by the federal government to assist in implementing federal mandates to employ persons with disabilities?

1. More than Enough **2. About Enough** **3. Less than Enough**
4. Hardly Any **5. None at All** **6. Don't Know**

8. Compared to the federal government, how committed do you feel your state is to implementing federal mandates to employ persons with disabilities?

1. More committed than federal government **2. As equally committed as federal government**
3. Less committed than federal government **4. Don't Know**

9. Based on your experience, please assess the extent to which the following factors *impede* the employment of persons with disabilities in agencies of ***your state government***. For each factor, please indicate whether, in your opinion, it is a weak impediment, a moderate impediment, a strong impediment, or no impediment at all.

Factor	Impediment is Weak	Moderate	Strong	No Impediment
A. Negative attitudes or misconceptions by employers about the work capabilities of persons with disabilities	1	2	3	4
B. Insufficient recruiting of disabled persons for employment	1	2	3	4
C. Employer concerns about the costs of undertaking accommodations to assist persons with disabilities in the work place	1	2	3	4
D. Insufficient funds to provide reasonable accommodations	1	2	3	4
E. Division of responsibility for enforcing employment protections across multiple state agencies	1	2	3	4
F. Lack of public official leadership in and commitment to enforcing employment protections for persons with disabilities	1	2	3	4
G. Other policy issues having greater priority in state government now	1	2	3	4

ARCHITECTURAL BARRIER REMOVAL

For the following questions, please circle the number of the response that best corresponds to your assessment of the situation.

	Very Effective				Not Very Effective	Don't Know
10. Overall, how effective has your state government been in removing physical barriers and achieving accessibility in *state government buildings and facilities*?	1	2	3	4	5	6
11. Overall, how effective have local governments been in removing physical barriers and achieving accessibility in *local government buildings and facilities in your state*?	1	2	3	4	5	6
12. Overall, how effective has the federal government been in removing physical barriers and achieving accessibility in *federal government buildings and facilities in your state*?	1	2	3	4	5	6

13. How would you describe the level of funding provided to your state (and local governments) by the federal government to assist in implementing federal mandates to remove physical barriers and achieve accessibility in state and local government buildings and facilities?

1. More than Enough **2. About Enough** **3. Less than Enough**
4. Hardly Any **5. None at All** **6. Don't Know**

14. Compared to the federal government, how committed is your state to implementing federal mandates to remove physical barriers and achieve accessibility in government buildings and facilities?

1. More committed than federal government **2. As equally committed as federal government**
3. Less committed than federal government **4. Don't Know**

15. Based on your experience, please assess the extent to which the following factors impede the removal of physical barriers in buildings and facilities of ***your state government***. For each factor, please indicate whether it is a weak impediment, a moderate impediment, a strong impediment, or no impediment at all.

Factor	Impediment is			No
	Weak	Moderate	Strong	Impediment
A. Low recognition of the impact of physical barriers on the access of persons with disabilities to public facilities	1	2	3	4
B. Confusion about what standards should be used to achieve accessibility	1	2	3	4
C. Employer concerns about the costs of modifying buildings to enhance the access and mobility of persons with disabilities	1	2	3	4
D. Insufficient funds to perform modifications of buildings and facilities	1	2	3	4
E. Division of responsibility for enforcing barrier removal policies across multiple state agencies	1	2	3	4
F. Lack of public official leadership in and commitment to enforcing accessibility policies	1	2	3	4
H. Other policy issues having greater priority in state government now	1	2	3	4

DISABILITY ISSUES

16. In general, to what extent would you say that the federal government practices what it preaches with regard to compliance with its own mandates in the disability policy field?

1. Very Much **2. Somewhat** **3. Only a Little**
4. Not at All **5. Don't Know**

17. What, in your view, are the major issues in federal–state–local relations that need to be addressed or resolved with respect to state and local compliance with federal mandates covering employment opportunities, barrier removal, and accessibility for persons with disabilities?

18. What, in your view, are the major factors that *impede or make difficult* compliance by your state and its local governments with federal mandates covering employment opportunities, barrier removal, and accessibility for persons with disabilities?

_____

_____

_____

_____

_____

_____

19. What, in your view, are the major factors that *facilitate or make easier* compliance by your state and its local governments with federal mandates covering employment opportunities, barrier removal, and accessibility for persons with disabilities?

_____

_____

_____

_____

_____

This survey is completely anonymous. We would like, however, to know the following general background information for each respondent.

Your state: _____ Years in disability-related field: _____

IF YOU WOULD LIKE A COPY OF THE RESULTS OF THIS SURVEY, PLEASE GIVE US THE FOLLOWING INFORMATION.

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip Code _____

THANK YOU FOR YOUR COOPERATION
Please Use the Return Envelope and Mail to:
Advisory Commission on Intergovernmental Relations
1111 – 20th Street, NW
Washington, DC 20575

Contact Person:
Bruce D. McDowell
(202) 653-5544

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What is ACIR?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public.

The Commission is composed of 26 members—nine representing the federal government, 14 representing state and local government, and three representing the public. The President appoints 20—three private citizens and three federal executive officials directly, and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Association, the National Conference of State Legislatures, the National League of Cities, U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Representatives by the Speaker of the House of Representatives.

Each Commission member serves a two-year term and may be reappointed.

As a continuing body, the Commission addresses specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning of the federal system. In addition to dealing with important functional and policy relationships among the various governments, the Commission extensively studies critical governmental finance issues. One of the long-range efforts of the Commission has been to seek ways to improve federal, state, and local governmental practices and policies to achieve equitable allocation of resources and increased efficiency and equity.

In selecting items for the research program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR, and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policy recommendations.