

General Services Administration

§ 105-8.103

(2) For class deviations, requests shall be sent to only the Administrator of General Services.

[55 FR 1673, Jan. 18, 1990]

§ 105-1.150 Citation.

(a) In formal documents, such as legal briefs, citations of chapter 105 material shall include a citation to title 41 of the Code of Federal Regulations or other titles as appropriate; e.g., 41 CFR 105-1.150.

(b) Any section of chapter 105, for purpose of brevity, may be informally identified as "GSPMR" followed by the section number. For example, this paragraph would be identified as "GSPMR 105-1.150(b)."

PART 105-8—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 56 FR 9871, Mar. 8, 1991, unless otherwise noted.

§ 105-8.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 105-8.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 105-8.103 Definitions.

For purposes of this part, the term—
Agency means the General Services Administration (GSA), except when the context indicates otherwise.

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

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs or activities conducted by GSA. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio

recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

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

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

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

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

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

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

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

disabilities. The term "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

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

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

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

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

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

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

Official or Responsible Official means the Director of the Civil Rights Division of the General Services Administration or his or her designee.

Qualified individual with handicaps means—

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

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation

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in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 105-8.140.

Respondent means the organizational unit in which a complainant alleges that discrimination occurred.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28); and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100-630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

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

§§ 105-8.104—105-8.109 [Reserved]

§ 105-8.110 Self-evaluation.

(a) The agency shall, by March 9, 1992, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

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

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

(1) A list of interested persons consulted;

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

(3) A description of any modifications made or to be made.

§ 105-8.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 105-8.112—105-8.129 [Reserved]

§ 105-8.130 General prohibitions against discrimination.

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

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

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

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

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

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to

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provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

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

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

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

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

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

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

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

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

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

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

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licenses or certified entities that subject qualified individuals with handicaps to discrimi-

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nation on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by part.

(b) The exclusion of persons without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

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

§§ 105-8.131—105-8.139 [Reserved]

§ 105-8.140 Employment.

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

§§ 105-8.141—105-8.147 [Reserved]

§ 105-8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.

GSA shall consult with the Architectural and Transportation Barriers Compliance Board (ATBCB) in carrying out its responsibilities under this part concerning architectural barriers in facilities that are subject to GSA control. GSA shall also consult with the ATBCB in providing technical assistance to other Federal agencies with respect to overcoming architectural barriers in facilities. The agency's Public Buildings Service shall implement this section.

§ 105-8.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 105-8.150 and 105-8.154, no qualified individual with handicaps shall, because

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the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 105-8.150 Program accessibility: Existing facilities.

§ 105-8.150-1 General.

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

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

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

§ 105-8.150-2 Methods.

(a) *General.* The agency may comply with the requirements of § 105-8.150 through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with

handicaps in the most integrated setting appropriate.

(b) *Historic preservation programs.* In meeting the requirements of § 105-8.105-1 in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to a historic property is not required because of §§ 105-8.105-1(b) or 105-8.154 alternative methods of achieving program accessibility include—

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

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

(3) Adopting other innovative methods.

§ 105-8.150-3 Time period for compliance.

The agency shall comply with the obligations established under § 105-8.150 by May 7, 1991; except where structural changes in facilities are undertaken, such changes shall be made by March 8, 1994, but in any event as expeditiously as possible.

§ 105-8.150-4 Transition plan.

In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 9, 1992; the transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(a) Identify physical obstacles in the facilities occupied by GSA that limit the accessibility of its programs and activities to individuals with handicaps;

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

(c) Specify the schedule for taking the steps necessary to achieve compliance with § 105-8.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

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

§ 105-8.151 Program accessibility: New construction and alterations.

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

§ 105.8.152 Program accessibility: Assignment of space.

(a) When GSA assigns or reassigns space to an agency, it shall consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or activities being inaccessible to individuals with handicaps.

(b) Prior to the assignment or reassignment of space to an agency, GSA shall inform the agency of the accessibility, and/or the absence of accessibility features, of the space in which GSA intends to locate the agency. If the agency informs GSA that the use of the space will result in one or more of the agency's programs being inaccessible, GSA shall take one or more of the following actions to make the programs accessible:

(1) Arrange for alterations, improvements, and repairs to buildings and facilities;

(2) Locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or

(3) Take any other actions that result in making this agency's programs accessible.

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The responsibility for payment to make the physical changes in the space shall be assigned on a case-by-case basis as agreed to by GSA and the user agency, dependent on individual circumstances.

(c) GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

§ 105-8.153 Program accessibility: Interagency cooperation.

§ 105-8.153-1 General.

GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, shall participate with the occupant agency in the development and implementation of the transition plan and shall provide information and guidance to the occupant agency. Upon request, GSA shall conduct space inspections to assist the agency in determining whether a current assignment of space results in one or more of the occupant agency's programs or activities being inaccessible. GSA shall provide the occupant agency with a written summary of significant findings and recommendations, together with data concerning programmed repairs and alterations planned by GSA and alterations that can be effected by the agency.

§ 105-8.153-2 Requests from occupant agencies.

(a) Upon receipt of an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's program(s) as required by the agency's section 504 transition plan, GSA shall assist or advise the requesting agency in providing or arranging for the requested action within the timeframes specified in the requesting agency's transition plan.

(b) If the requested action cannot be completed within the time frame specified in an agency's transition plan, GSA shall so advise the requesting agency within 30 days of the request by submitting, after consultation with the agency, a revised schedule specifying the date by which the action shall be

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completed. If the delay in completing the action results in or continues the inaccessibility of the requesting agency's program, GSA and the agency shall, after consultation, take interim measures to make the agency's program accessible.

(c) If GSA determines that it is unable to take the requested action, GSA shall—

(1) Within 30 days, set forth in writing to the requesting agency the reasons for denying the agency's request, and

(2) Within 90 days, propose to the requesting agency other methods for making the agency's program accessible.

(d) Receipt of a copy of an occupant agency's transition plan under section 504 shall constitute notice to GSA of the requested actions in the transition plan and of the times frames which the actions are required to be completed.

§ 105-8.154 Program accessibility: Exceptions.

Sections 105-8.150, 105-8.152, and 105-8.153 do not require GSA to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where GSA personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

§§ 105-8.155—105-8.159 [Reserved]

§ 105-8.160 Communications.

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

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

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

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

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

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

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

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 150.8.160 would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with §105-8.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 105-8.161—105-8.169 [Reserved]

§ 105-8.170 Compliance procedures.

§ 105-8.170-1 Applicability.

Except as provided in §105-8.170-2, §§105-8.170 through 105-8.170-13 apply to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

§ 105-8.170-2 Employment complaints.

The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

§ 105-8.170-3 Responsible Official.

The Responsible Official shall coordinate implementation of §§105-8.170 through 105-8.170-13.

§ 105-8.170-4 Filing a complaint.

(a) *Who may file a complaint.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any persons who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representa-

tive of a member of that class may file a complaint with the Official.

(b) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(c) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this section, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(d) *How to file.* Complaints may be delivered or mailed to the Administrator, the Responsible Official, or other agency officials. Complaints should be sent to the Director of Civil Rights, Civil Rights Division (AKC), General Services Administration, 18th and F Streets, NW., Washington, DC 20405. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

§ 105-8.170-5 Notification to the Architectural and Transportation Barriers Compliance Board.

The agency shall prepare and forward comprehensive quarterly reports to the Architectural and Transportation Barriers Compliance Board containing information regarding complaints received alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps. The agency shall not include in the report the identity of any complainant.

§ 105-8.170-6 Acceptance of complaint.

(a) The Official shall accept a complete complaint that is filed in accordance with §105-8.170-4 and over which the agency has jurisdiction. The Official shall notify the complainant and

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the respondent of receipt and acceptance of the complaint.

(b) If the Official receives a complaint that is not complete, he or she shall notify the complainant within 30 days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(c) The Official may reject a complaint, or a position thereof, for any of the following reasons:

(1) It was not filed timely and the extension of the 180-day period as provided in § 105-8.170-4(c) is denied;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same complainant(s) which is pending in the agency or which has been resolved or decided by the agency; or

(3) It is not within the purview of this part.

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

§ 105-8.170-7 Investigation/conciliation.

(a) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. The 180-day time limit may be extended with the permission of the Assistant Attorney General. The investigation should include, where appropriate, a review of the practices and policies that led to the filing of the complaint, and other circumstances under which the possible noncompliance with this part occurred.

(b) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official du-

ties and during the course of regular duty hours.

(c) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and the respondent with an opportunity for informal resolution of the complaint.

(d) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and signed by the complainant and respondent. The agreement shall be made part of the complaint file with a copy of the agreement provided to the complainant and the respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(e) The written agreement shall remain in effect until all corrective actions to which the complainant and the respondent have agreed upon have been completed. The complainant may reopen the complaint in the event that the agreement is not carried out.

§ 105-8.170-8 Letter of findings.

If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested. The letter shall contain, at a minimum, the following:

(a) Findings of fact and conclusions of law;

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

(c) A notice of the right of the complainant and the respondent to appeal to the Special Counsel for Ethics and Civil Rights; and

(d) A notice of the right of the complainant and the respondent to request a hearing.

§ 105-8.170-9 Filing an appeal.

(a) Notice of appeal to the Special Counsel for Ethics and Civil Rights, with or without a request for hearing, shall be filed by the complainant or the

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respondent with the Responsible Official within 30 days of receipt of the letter of findings required by

§ 105-8.170-7.

(b) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for a hearing within the time limit specified in § 105-8.170-9(a) or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(c) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Special Counsel for Ethics and Civil Rights.

(d) If neither party files an appeal within the time prescribed in § 105-8.170-9(a) the Responsible Official shall certify, at the expiration of the time, that the letter of findings is the final agency decision on the complaint.

§ 105-8.170-10 Acceptance of appeals.

The Special Counsel shall accept and process any timely appeal. A party may appeal to the Deputy Administrator from a decision of the Special Counsel that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Special Counsel.

§ 105-8.170-11 Hearing.

(a) Upon a timely request for a hearing, the Special Counsel shall take the necessary action to obtain the services of an Administrative law judge (ALJ) to conduct the hearing. The ALJ shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date, or there are other extenuating circumstances.

(b) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The ALJ may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly

delay the outcome and may contribute materially to the proper disposition of the proceedings.

(c) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act). The ALJ shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(1) Arrange and change the date, time, and place of hearings and pre-hearing conferences and issue notices thereof;

(2) Hold conferences to settle, simplify, or determine the issue in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(3) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(4) Examine witnesses and direct witnesses to testify;

(5) Receive, rule on, exclude, or limit evidence;

(6) Rule on procedural items pending before him or her; and

(7) Take any action permitted to the ALJ as authorized by this part, or by the provisions of the Administrative Procedure Act (5 U.S.C. 551-559).

(d) Technical rules of evidence shall not apply to hearings conducted pursuant to § 105-8.170-11, but rules or principles designed to assure production of credible evidence available and to subject testimony to cross-examination shall be applied by the ALJ whenever reasonably necessary. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

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(e) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(1) Persons employed by the agency shall, upon request to the agency by the ALJ, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(2) Employees of other Federal agencies called to testify at a hearing shall, at the request of the ALJ and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(3) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(4) The ALJ may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(5) The respondent shall pay the required expenses and charges for the ALJ and court reporter.

(6) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(f) The ALJ shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Special Counsel for Ethics and Civil Rights within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Special Counsel.

(g) Within 15 days after receipt of the recommended decision of the ALJ any party may file exceptions to the decision with the Special Counsel. Thereafter, each party will have ten days to file reply exceptions with the Special Counsel.

§ 105-8.170-12 Decision.

(a) The Special Counsel shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the transmittal of the notice of appeal and investigative record pursuant to § 105-8.170-9(c) or after the period for filing exceptions ends, whichever is applica-

ble. If the Special Counsel for Ethics and Civil Rights determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Special Counsel shall have 60 days from receipt of the additional information to render the decision on the appeal. The Special Counsel shall transmit his or her decision by letter to the parties. The time limits established in this paragraph may be extended with the permission of the Assistant Attorney General. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Special Counsel shall consider the recommended decision of the ALJ and render a final decision based on the entire record. The Special Counsel may also remand the hearing record to the ALJ for a fuller development of the record.

(b) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(1) The manner in which compliance with the provisions of the decision has been achieved;

(2) The reasons any action required by the final decision has not yet been taken; and

(3) The steps being taken to ensure full compliance. The Official may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision or for specific adjudicatory decisions arising out of implementation.

§ 105-8.170-13 Delegation.

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

§ 105-8.171 Complaints against an occupant agency.

(a) Upon notification by an occupant agency that it has received a complete complaint alleging that the agency's

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program is inaccessible because existing facilities under GSA's control are not accessible and usable by individuals with handicaps, GSA shall be jointly responsible with the agency for resolving the complaint and shall participate in making findings of fact and conclusions of law in prescribing and implementing appropriate remedies for each violation found.

(b) GSA shall make reasonable efforts to follow the time frames for complaint resolution that go into effect under the notifying occupant agency's compliance procedures when it receives a complete complaint.

(c) Receipt of a copy of the complete complaint by GSA shall constitute notification to GSA for purposes of §105-8.171(a).

PART 105-50—PROVISION OF SPECIAL OR TECHNICAL SERVICES TO STATE AND LOCAL UNITS OF GOVERNMENT

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AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and sec. 302, 82 Stat. 1102; 42 U.S.C. 4222.

SOURCE: 41 FR 21451, May 26, 1976, unless otherwise noted.

§ 105-50.000 Scope of part.

This part prescribes rules and procedures governing the provision of special or technical services to State and local units of government by GSA. This part also prescribes principles governing reimbursements for such services.

§ 105-50.001 Definitions.

The following definitions are established for terms used in this part.

§ 105-50.001-1 State.

State means any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State.

§ 105-50.001-2 Political subdivision or local government.

Political subdivision or local government means a local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district created by or pursuant to State law.