

110th Edition

Statistical Abstract of the United States 1990



The National Data Book



U.S. Department of Commerce
Robert A. Mosbacher, Secretary
Thomas J. Murrin, Deputy Secretary
Michael R. Darby, Under Secretary for
Economic Affairs

BUREAU OF THE CENSUS
Barbara Everitt Bryant, Director



Congressional Research Service
The Library of Congress

To: Hon. Robert Dole
Attn: Mr. West
Re: U.S. Businesses Employing
15 or more people

The attached information is forwarded in
response to your inquiry.

*The data does not fit your
specifications
precisely.*

*Please note
exclusions at the head of Table
872.*

Sincerely,

Joseph E. Ross
Joseph E. Ross
Director

From:

Robyn Wine

Tel.:

7-6614

No. 870. EMPLOYEES AND PAYROLL, BY EMPLOYMENT-SIZE CLASS: 1975 TO 1986

[See headnote, table 872]

EMPLOYMENT-SIZE CLASS	Unit	1975	1979	1980	1981	1982	1983	1984	1985	1986
Employees, total ¹	1,000	60,519	75,411	74,844	74,848	74,287	72,974	78,021	81,111	83,380
Under 20 employees	1,000	16,393	19,406	19,423	19,515	19,898	20,136	21,171	21,810	22,296
20 to 99 employees	1,000	16,272	20,992	21,168	21,231	21,143	20,806	22,449	23,539	24,311
100 to 499 employees	1,000	13,713	17,527	17,840	17,977	17,444	16,794	18,348	19,410	20,260
500 to 999 employees	1,000	4,872	5,780	5,689	5,497	5,436	5,186	5,614	5,716	5,780
1,000 or more employees	1,000	9,315	10,976	10,716	10,630	10,376	10,050	10,413	10,645	10,734
Annual payroll ¹	Bil. dol.	596	952	1,035	1,076	1,198	1,269	1,339	1,514	1,609
Under 20 employees	Bil. dol.	138	210	231	254	272	298	326	352	375
20 to 99 employees	Bil. dol.	147	239	261	288	303	319	358	388	414
100 to 499 employees	Bil. dol.	135	224	249	279	286	297	334	362	391
500 to 999 employees	Bil. dol.	53	84	91	99	104	107	120	126	132
1,000 or more employees	Bil. dol.	123	196	208	229	234	248	269	286	298

¹ Prior to 1986, totals for employees and annual payroll have been revised. Detail may not add to totals because revisions for size class are not available.

Source: U.S. Bureau of the Census, *County Business Patterns*, annual.

No. 871. ESTABLISHMENTS, EMPLOYEES, AND PAYROLL, BY INDUSTRY: 1975 TO 1986

[See headnote, table 872]

INDUSTRY	ESTABLISHMENTS (1,000)				EMPLOYEES (1,000)				PAYROLL (bil. dol.)			
	1975	1980	1985	1986	1975	1980	1985	1986	1975	1980	1985	1986
All industries ¹	4,114	4,543	5,701	5,807	60,519	74,844	81,111	83,380	596	1,035	1,514	1,609
Agricultural services ²	40	46	64	68	195	290	380	412	2	3	5	6
Mining	24	30	37	35	720	994	943	847	10	22	28	24
Contract construction	364	418	476	492	3,322	4,473	4,480	4,659	44	75	98	104
Manufacturing	306	319	358	355	18,372	21,165	19,429	19,142	213	355	458	468
Transportation ³	147	168	203	210	3,908	4,623	4,809	4,884	51	88	123	128
Wholesale trade	350	385	438	440	4,332	5,211	5,624	5,725	52	89	130	138
Retail trade	1,190	1,223	1,407	1,441	12,271	15,047	16,852	17,550	76	124	179	193
Finance and insurance ⁴	372	421	488	504	4,247	5,295	6,004	6,371	42	77	132	151
Services	1,118	1,278	1,712	1,811	12,655	17,186	21,549	22,878	102	197	346	381

¹ Includes nonclassifiable establishments, not shown separately. ² Includes forestry and fisheries. ³ Includes other public utilities. ⁴ Includes real estate.

Source: U.S. Bureau of the Census, *County Business Patterns*, annual.

No. 872. ESTABLISHMENTS, EMPLOYEES, AND PAYROLL, BY EMPLOYMENT-SIZE CLASS AND INDUSTRY: 1986

[Excludes government employees, railroad employees, self-employed persons, etc. See "General Explanation" in source for definitions and statement on reliability of data. An establishment is a single physical location where business is conducted or where services or industrial operations are performed]

EMPLOYMENT-SIZE CLASS	Unit	All industries	Agricultural services ²	Mining	Contract construction	Manufacturing	Transportation ³	Wholesale trade	Retail trade	Finance and insurance ⁴	Services
Establishments, total	1,000	5,807	68	35	492	355	210	440	1,441	504	1,811
Under 20 employees	1,000	5,082	65	28	445	230	170	374	1,237	450	1,639
20 to 99 employees	1,000	605	3	6	42	88	32	59	184	45	139
100 to 499 employees	1,000	107	(2)	1	5	32	7	6	19	7	29
500 to 999 employees	1,000	8	(2)	(2)	(2)	4	1	(2)	1	1	3
1,000 or more employees	1,000	5	(2)	(2)	(2)	2	(2)	(2)	(2)	(2)	2
Employees, total	1,000	83,380	412	847	4,659	19,142	4,884	5,725	17,550	6,371	22,878
Under 20 employees	1,000	22,296	235	141	1,877	1,420	823	2,048	6,418	1,836	6,746
20 to 99 employees	1,000	24,311	110	240	1,607	3,900	1,312	2,231	7,321	1,807	5,621
100 to 499 employees	1,000	20,260	52	278	797	6,525	1,352	1,108	3,230	1,418	5,499
500 to 999 employees	1,000	5,780	10	103	142	2,409	418	190	346	427	1,735
1,000 or more employees	1,000	10,734	4	85	236	4,888	980	147	235	882	3,277
Annual payroll	Bil. dol.	1,609	5.8	24.5	104.5	467.8	127.7	138.2	193.0	151.0	381.4
Under 20 employees	Bil. dol.	375	3.4	3.3	37.0	27.8	16.3	45.5	68.0	38.5	121.8
20 to 99 employees	Bil. dol.	414	1.5	6.1	37.3	79.4	30.1	53.0	76.4	42.0	86.8
100 to 499 employees	Bil. dol.	391	.7	8.7	20.3	142.3	35.8	29.3	38.4	34.5	80.7
500 to 999 employees	Bil. dol.	132	(2)	3.6	3.7	59.9	13.0	5.8	5.6	11.0	29.5
1,000 or more employees	Bil. dol.	298	(2)	2.8	6.2	158.5	32.4	4.7	5.0	25.3	62.6

² Less than 500 establishments or \$500 million. ³ Includes nonclassifiable establishments not shown separately. ⁴ Includes forestry and fisheries. ⁵ Includes other public utilities. ⁶ Includes real estate.

Source: U.S. Bureau of the Census, *County Business Patterns*, annual.

605
107
5

725,000 establishments
5,807,000 = 12.4%

1.1% of total
businesses

No. 873. PERCENT DISTRIBUTION OF ENTERPRISES

[In percent, except number of enterprises. Covers enterprise employment. Covers approximately 93 percent of full-time business a Dun and Bradstreet credit rating, or using insurance markets. B 1986, a longitudinally weighted 50 percent sample of SBA's ur files]

SALES CLASS	Total	1-4
Number of enterprises, total	3,805,982	1,967,800
Under \$25,000	3.7	6.7
\$25,000-\$49,999	6.9	12.4
\$50,000-\$99,999	14.9	25.0
\$100,000-\$499,999	44.4	47.8
\$500,000-\$999,999	12.4	5.2
\$1,000,000-\$1,999,999	8.1	1.5
\$2,000,000-\$4,999,999	5.7	1.1
\$5,000,000-\$9,999,999	2.0	0.7
\$10,000,000-\$24,999,999	1.3	0.3
\$25,000,000 and over	.7	0.1

- Represents zero.

Source: U.S. Small Business Administration, Office of Advocacy, u

No. 874. DRUG TESTING AND EMPLOYEE ASSISTANCE PROGRAMS BY INDUSTRY

[As of summer. Based on a sample of 7,502 private nonagricultural establishments. Sampling variability; see

SIZE OF ESTABLISHMENT AND INDUSTRY	ESTABLISHMENTS			
	Total (1,000)	With a drug testing program ¹	Per cent	Number (1,000)
Total	4,542.8	145.3	3.2	29
Size of establishment:				
Under 50 employees	4,224.6	94.4	2.2	22
50 to 99 employees	195.6	24.2	12.4	3
100 to 499 employees	107.5	21.4	19.9	3
500 to 999 employees	9.5	2.9	30.6	1
1,000 or more employees	5.6	2.5	44.6	1
Industry:				
Mining	31.6	6.8	21.6	1
Construction	458.1	10.5	2.3	1
Manufacturing	335.1	31.9	9.5	3
Durable goods	193.9	19.1	9.9	2
Nondurable goods	141.2	12.8	9.1	1
Transportation	153.5	22.9	14.9	1
Communication and public utilities	37.5	6.6	17.6	1
Wholesale trade	467.9	24.7	5.3	3
Retail trade	1,101.8	7.4	.7	5
Finance, insurance, and real estate	403.9	12.9	3.2	3
Services	1,553.4	21.5	1.4	8

¹ A drug test is a test designed to detect the presence of metabolites classified as Schedule I or II under Controlled Substances Act—opiates. Excluded are prescription drugs, steroids, and alcohol. ² Employment organization personnel or through an outside contractor. Programs are

Source: U.S. Bureau of Labor Statistics, Report 760, *Survey of Emp*

May 2, 1990

TO: Mo West
FROM: Jim Wholey *pu*
SUBJECT: Wichita Chamber's Concerns with Disabilities Act

Attached for your review is the list of specific concerns with the ADA provisions presented to me by Tim Witsman of the Wichita Chamber of Commerce.

Wichita Chamber of C

AMERICANS WITH DISABILITIES ACT

- Tim Witzman -

Concerns of The Wichita Area Chamber of Commerce

Listed below are seven areas in the Americans with Disabilities Act (HR 2273) where business is seeking changes. The Wichita Area Chamber of Commerce encourages efforts to prohibit discrimination against, and make accommodations for the disabled. However, The Chamber feels this legislation is so vague and subjective that it would result in monumental litigation until the courts define the requirements. The ADA would burden employers with enormous compliance expenses without truly addressing the needs of the disabled. Each area is followed by recommendations.

I. Vagueness of Terms

ADA: Title I (employment section), states that an employee must be able to perform the "essential functions" of a job and not those that are "marginal".

OUR CONCERN: The Small Business Administration defines a small business in the manufacturing or wholesale industry as one with 500 or fewer employees. Retailers and services are considered a small business if they have \$3.5 million or less in sales annually. The "essential functions" of a job are particularly difficult to define when you consider that small businesses often hire people to do a variety of different tasks while larger employers tend to hire employees to do one particular job. The number of "essential functions" would be extremely difficult to define.

Employers should only be required to define those functions of a job that are bona fide occupational qualifications.

ADA: ADA requires that employers make physical changes to buildings and work equipment, if to do so would not impose "undue hardship" and if the changes are "readily achievable."

OUR CONCERN: Employers should be given the opportunity to make a full and fair assessment of what's an "undue hardship" and what's achievable. This would also reduce the incentive to litigate, as judges would be giving full and

fair consideration to an employer's assessment.

Economic reality to the "undue hardship" of an individual facility should also be considered, not the financial strength of the parent company.

II. Compliance Dates

ADA: Employer compliance with Title I (employment section) is required two years after the effective date. Employer compliance with Title III (public accommodations section) is required 18 months after the effective date. Both deadlines are regardless of whether or not the regulations have been completed.

OUR CONCERN: Regulations provide specificity, telling employers how to comply. Therefore, the effective date of business compliance should be tied into the date that final regulations are issued. Without complete regulations, businesses will be faced with another confusing Section 89 compliance problem.

III. Preemption of Civil Rights Protections For the Disabled

ADA: No preemption for laws at the local, state or federal level which address civil rights for the disabled is included.

OUR CONCERN: The litigating party should be required to choose one statute under which to proceed. ADA language is also written assuming that all cases will go through the judicial process. Administrative remedies should be available and required prior to litigating a claim in order to reduce the incentive to litigate.

IV. Small Business Exemption - Public Accommodations Section

ADA: While a small business exemption exists under Title I, no such exemption exists under Title III.

OUR CONCERN: An amendment providing similar relief for small business under the public accommodations section should be offered.

V. Anticipatory Lawsuits

ADA: ADA states that an individual can sue if he/she has "reasonable grounds" to believe he/she is about to be discriminated against in the future.

OUR CONCERN:

An amendment should clarify that anticipatory lawsuits can be allowed only for future construction violations, where there is physical evidence that access for the disabled will not be possible in the future. This legislation is also written on the presumption that complaints will be taken directly through the court system. Administrative review should be considered first to reduce the amount of litigation.

VI. Violations and Penalties

ADA: When a "pattern and practice" case is brought under Title III (public accommodations section), monetary damages and civil penalties are available at the discretion of the Attorney General and the court.

OUR CONCERN:

First, a distinction should be made between unintentional violations and those that are willful and egregious. Second, monetary damages should be limited to actual, out-of-pocket expenses. Third, it should be made clear that civil penalties may be imposed in cases of willful and egregious violations only.

Legislation should not provide for jury trials, punitive and compensatory damages because it will only generate lawsuits, not job opportunities. Remedies should be specifically identified and limited to back pay, front pay, injunctive relief and other make-whole remedies.

VII. Tax Credits

ADA: ADA does not offer financial assistance under the public accommodations provisions.

OUR CONCERN:

Consideration must be given to the amount that a business is expected to pay to accommodate the handicapped. Financial incentives would go far in helping small businesses comply. Section 190 of the Internal Revenue Code should be expanded past the \$35,000 maximum to allow tax credits for all expenditures made to accommodate the disabled.

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

JAMES H. ENGLISH, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

June 11, 1990

The Honorable Robert Dole
United States Senate
141 Hart Senate Office Building
Washington, D.C. 20510

Dear Bob:

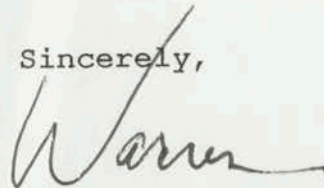
Thank you for your letter regarding an appropriation of \$1.8 million to implement an amendment you successfully offered to the Americans with Disabilities Act.

I appreciate knowing of your personal interest in this matter. The staff of the Subcommittee on Commerce, Justice, and State, the Judiciary and Related Agencies is attempting to clarify responsibility for the implementation of this amendment with your staff and with the Administration. I look forward to working with you in that regard.

Thank you again for bringing this matter to my attention.

Best wishes,

Sincerely,



WARREN B. RUDMAN
United States Senator

06/19/90

14:31

202 653 7863

ATBCB

001



U.S. Architectural and Transportation
Barriers Compliance Board
Fax Cover Sheet

To:

Agency:

Department:

Phone:

Fax:

6/19/90

MO WEST
SENATOR DOLE

224-8952

From:

L. W. ROFFEE

U.S. Architectural and Transportation
Barriers Compliance Board
1111 18th Street, NW, Suite 501
Washington, DC 20036-2894
(202) 653-7834
FAX (202) 653-7863

Page 1 of 5

MO! As REQUESTED - I'll CALL
SOON!

The total additional appropriation required by the ATBCB to meet its responsibilities under the ADA is:

o	Additional FTE salaries	\$445,600
o	Office space	\$19,000
o	Office equipment	\$30,000
o	Technical Assistance	\$851,000
o	Travel and per diem for training	\$540,000
o	Total ADA responsibilities	\$1,885,600

An initial estimate of the costs of the technical assistance training program are:

o	Contract to prepare training materials, lesson plans and to conduct training	\$600,000
o	Contract to develop technical assistance manual for public accommodations	\$90,000
o	Contract to develop technical assistance manual for transit facilities	\$90,000
o	Printing 6000 technical assistance manuals	\$60,000
o	Board and staff travel to oversee training	\$11,000
o	Total technical assistance program	<u>\$851,000</u>
o	*Travel and per diem for 1500 participants	\$525,000
o	Total technical assistance program and participant travel	<u>\$1,376,000</u>

* If the Government wide technical assistance program is also based around local training of people to provide technical assistance, then this cost could be shared with other Federal agencies.

- Develop training materials and provide training
- Provide replacement training
- Develop and monitor contracts
- Provide administrative support

In addition to the salaries for the new staff we would need additional office space, work station furniture, and computer equipment.

Contract support would be needed to:

- Maintain standards
- Develop manuals
- Provide initial technical assistance training.

Providing technical assistance is the major, and very costly, new responsibility. Until the ADA is passed and, as is required in the Bill, the Board works with the Attorney General to develop the government wide technical assistance plan it is not possible to detail the specific cost of the plan.

However, the Board proposed concept for providing the technical assistance would be as follows:

- o We do not feel it would be efficient or possible to attempt to handle all of the requests for technical assistance directly through the Board's staff. The number of requests could be overwhelming, and could best be handled by trained people at the local level.
- o We believe that an effective technical assistance plan should involve training people in communities to provide direct technical assistance to entities covered by the Act. Similar to the training that was developed to implement Section 504 of the Rehabilitation Act, the Board would sponsor training conferences on the technical requirements of MGRAD and the DOT and DOT regulations for such organizations as local advocacy groups, AIA chapters, business organizations, and regional transit authorities. These local organizations would then be sources of assistance and information to other local entities covered by the Act. We would propose to hold 30 training sessions across the nation with each one attended by 50 people.
- o In future years training replacements would be conducted by ATBCB staff.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
FISCAL YEAR 1991 ADA REQUIREMENTS

The ADA would give the ATBCB the following new responsibilities:

- o Supplement MGRAD to include standards for:
 - Transit facilities
 - Transit vehicles
 - Public accommodations
 - Outdoor recreation
 - Communications
- o Develop technical assistance manuals for entities covered by the ADA (House Education and Labor Committee Bill)
- o Maintain the new MGRAD
- o Review and comment on the study of over-the-road buses
- o Develop a government wide technical assistance plan with the Department of Justice
- o Assist the Department of Justice certify state and local building codes upon application by state or local governments (House Education and Labor Committee Bill)
- o Implement the technical assistance plan with respect to public accommodations and transit systems.

The requirement in the House bill to certify state codes does not significantly add to the funding requirements. We believe that the development of training manuals is crucial and we would intend to produce the manuals even if they are not explicitly required.

The new responsibilities imposed on the Board by the ADA are both staff and contract intensive. The Board would require 11.5 additional FTE positions which would be used to:

- Develop standards
- Maintain standards
- Certify state or local building codes
- Provide technical assistance

U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE
Wednesday, Feb. 26, 1992

CONTACT: Reginald Welch
(202) 663-4900
TDD: (202) 663-4494
Deidre Davis
(202) 663-7092

**EEOC AWARDS CONTRACT TO DISABILITY RIGHTS GROUP
TO PROVIDE TRAINING ON AMERICANS WITH DISABILITIES ACT**

WASHINGTON -- The U.S. Equal Employment Opportunity Commission has awarded a \$1 million contract to the Disability Rights Education and Defense Fund (DREDF). The nationally known legal advocacy and education organization will use the contract to train people with disabilities about the Americans with Disabilities Act of 1990 (ADA).

Developed and funded jointly with the U.S. Department of Justice, the DREDF-run training program will focus on provisions of the ADA barring discrimination against persons with disabilities in employment, public services and public accommodations.

EEOC Chairman Evan J. Kemp, Jr. said the program "bolsters EEOC's effort to educate employers and individuals with disabilities about the ADA and unlawful job discrimination."

Some 400 people with different disabilities from across the nation will participate in the training, with priority given to those with organizational support for duplicating the ADA training in their communities. All participants will be required to return to their communities to train employers and persons with disabilities.

In the first of two training phases, participants will learn about their rights under the ADA's Title I (Nondiscrimination in Employment), Title II (Nondiscrimination in Public Services Provided by State and Local Governments) and Title III (Nondiscrimination in Public Accommodations and Services Operated by Private Entities).

-over-

One hundred participants selected from the first phase of training will receive further instruction on Title I requirements, regulations and enforcement procedures as preparation for teaching others.

Those 100 participating in the second phase will focus on helping others comply with the law and resolving disputes in the most cost-effective and non-adversarial manner.

ADA employment requirements will become effective for employers with 25 or more employees on July 26, 1992, and will expand to cover employers with 15 or more employees on July 26, 1994.

In addition to this contract, the EEOC is developing programs for training trade and business organizations and individual employers on their responsibilities under the ADA. The EEOC has developed an ADA Technical Assistance Manual, which provides guidance to employers on the practical application of the ADA's requirements.

Further, the EEOC has developed an ADA Handbook and an assortment of materials on the rights and responsibilities of persons affected by the ADA. All information is available in braille, large print, audiotape and computer disk. The EEOC also will make available speakers who are informed on the requirements of the ADA.

The EEOC enforces Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Equal Pay Act, federal sector employment provisions of the Rehabilitation Act of 1973, and the recently enacted Civil Rights Act of 1991.

#

THE AMERICANS WITH DISABILITIES ACT IMPLEMENTATION PROJECT: PHASE I

With the impending enactment of the Americans with Disabilities Act (ADA), attention will shift from Congress to (a) federal agencies, which will develop regulations to implement this far-reaching Act, and (b) the sectors of society that are subject to its requirements. According to ADA (S. 933), "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency...." The goal of the ADA Implementation Project: Phase I is to assist both the federal agencies responsible for developing the regulations for the Act and the institutions and businesses that are required to comply with them.

What Is The ADA Implementation Project: Phase I?

The product of the ADA Implementation Project: Phase I will be a document responding to the question, "What does research in the social sciences reveal that could facilitate the successful implementation of ADA?" The document will focus on what is known as a result of research and analysis that could assist those implementing the ADA. It will provide research knowledge in an even-handed manner both to the entities subject to the Act's requirements and to those who are charged with enforcing it. The significant pool of research and experience that has been developed over the fifteen years of implementing Section 504 of the Rehabilitation Act will facilitate the creation of this document.

What Topics Will the Research Synthesis Cover?

The project will commission several papers covering a range of topics germane to the implementation of ADA. Topics will include:

1. Overview of the ADA. What are the requirements of the Act? To whom do they apply? How does the Act relate to other federal laws such as Section 504 of the Rehabilitation Act and the Fair Housing Act? What remedies are authorized by the Act?
2. The Demographics of Disability. What are the best estimates of persons with disabilities by geographic area? What are the implications for the successful implementation of the ADA?
3. Employment. What accommodations have been made successfully for people with what disabilities, in what settings and at what cost? What are the cost/benefit ratios of employing persons with disabilities? What kinds of training, placement, and supervision practices are available in the vocational rehabilitation field that will further the implementation of ADA? What research should be pursued in the future?

- 2 -

4. Transportation. What are the specific ADA requirements for transportation? What costs and benefits are associated with various transportation accommodations?
5. Public Accommodations. What are the ADA requirements for public accommodations? What is known about past public accommodations: What were they? How were they used? What did they cost? How effective were they? What is the future research agenda for public accommodations?
6. Communications. What does ADA require for communications? What is known about the cost, effectiveness, and utilization rate of communication devices? What areas should be researched?
7. Technology. What technology is relevant? What facilitating role can technology play? What is known about the effectiveness of technology in various environments and for various purposes? What do technological interventions cost? Who pays for them?

What Is the Timeline for the Project?

Papers are currently being commissioned for this project by the Milbank Memorial Fund. These papers will be submitted and reviewed by experts in late summer. The document synthesizing the research will be issued in the Fall of 1990.

Who Is Involved In the Project?

The Milbank Memorial Fund, under the leadership of its President, Daniel M. Fox, initiated the project and will oversee its development. Jane West of Washington, D.C., is the project director. An advisory group of individuals knowledgeable about ADA, the social sciences, and legal research will guide the project. Several members of the advisory group will participate in writing papers for the research synthesis.

Members of the advisory group include:

Robert L. Burgdorf, Jr.
District of Columbia School of Law
Washington, DC

Paul Hearne, President
Dole Foundation for Employment of
People with Disabilities
Washington, DC

- 3 -

Nancy Jones
Legislative Attorney
American Law Division
Congressional Research Service
Library of Congress
Washington, DC

Robert A. Katzman
President
The Governance Institute
Washington, DC

Linda Morra
Director
Intergovernmental and Management Issues
General Accounting Office
Washington, DC

Chris K. Olander
Executive Director
The J.M. Foundation
New York, NY

Irving K. Zola
Department of Sociology
Brandeis University
Waltham, MA

What Is Anticipated for the ADA Implementation Project: Phase II?

Phase II of the project will involve disseminating the document produced by Phase I through a wide array of technical-assistance efforts. The Milbank Memorial Fund anticipates that numerous public and private organizations will participate in the planning, funding, and implementation of Phase II.

Whom Do I Contact About this Project?

If you want more information about the project, or would like to share information, particularly about relevant research studies, contact:

Jane West
5104 42nd Avenue
Hyattsville, MD 20781
Telephone: (301) 699-8594

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Consortium for Citizens with Disabilities

For further information contact:

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Curt Decker, NAPAS, 202/408-9514

January 4, 1991

Stewart B. Oneglia, Chief
Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
Box 66118
Washington, D.C. 20035-6118

Re: ADA Proposed Federal Government Technical Assistance Plan

Dear Ms. Oneglia:

The Consortium for Citizens with Disabilities (CCD) and other national organizations that advocate for the rights of our nation's citizens with disabilities and their families, welcomes the opportunity to comment on the technical assistance plan proposed by the Department of Justice. CCD, a coalition of national consumer, provider and professional organizations, played a leading role in the enactment of the Americans with Disabilities Act.

We believe that effective implementation of the ADA will depend on the amount and quality of technical assistance that is provided to both covered entities, and individuals with rights under the law, and their advocates. The proposed plan contains many individual agency projects that are worthwhile and very useful. However, in evaluating the entire plan, we have the following concerns.

The proposed plan lacks adequate emphasis on the importance of coordination of technical assistance activities. In our view, coordination of all technical assistance activities is critical to effective implementation of the ADA. Unlike other civil rights laws, multiple agencies have jurisdiction over technical assistance provisions of the ADA. Covered entities and individuals with rights under the law will receive technical assistance from many agencies. There is, however, a great potential for inconsistency and duplication. The disability community and Congress intended that the DOJ have the responsibility for coordinating the federal government's technical assistance efforts so that such duplication and inconsistency could be avoided. We urge the DOJ, in its final plan, to elaborate on its coordination responsibility.

In addition the proposed plan does not adequately reflect involvement of persons with disabilities and their advocates in the development of either technical assistance strategies or dissemination of information and materials about the ADA's requirements. Congress, in enacting the ADA, recognized the fact that persons with disabilities and their advocates are often the

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best experts on how to provide reasonable accommodations in the workplace and access to public accommodations in the most effective and inexpensive manner. Persons with disabilities and their advocates must be involved at every stage of the process. Technical assistance efforts will not be effective if persons with disabilities are consulted only after materials or model compliance strategies are developed. In order to take advantage of this source of expertise, we recommend that the final Technical Assistance Plan provide for training of people with disabilities and their advocates in the substance of the statute and regulations so that those individuals can become local community resources to the business community.

It is also critical that all training and other technical assistance materials be in a form that can be used by all persons with disabilities, including those with low reading skills and individuals with sensory impairments. Technical training about the ADA coupled with the inherent experience of individuals who live with disabilities will provide an invaluable, readily available and willing pool of experts who can play a critical role in making the promise of the ADA a reality.

Finally, we are very concerned about the availability of funding for the vast array of projects proposed in this plan. We are aware of the limited resources available to the DOJ and other agencies for FY 1991 activities. We strongly recommend that the DOJ, in its coordination role, works to insure that available funds are used most effectively, to avoid inconsistencies and duplication of efforts among agencies. We also strongly urge the DOJ and all other federal agencies with technical assistance responsibilities to request substantial increases in their FY 1992 budgets to implement this plan. CCD and the entire disability community pledges to aggressively advocate for such increases in the appropriations process. However, the success of our efforts to secure adequate appropriations will depend on the DOJ's leadership in making a commitment to securing these funds.

We look forward to working with you in the months ahead to insure that the ADA's technical assistance program achieves the goals of this landmark law.

Sincerely,

Academy of Physical Medicine and Rehabilitation
AIDS Action Council
AIDS National Interfaith Network
Alexander Graham Bell Association for the Deaf
American Association for Counseling and Development
American Congress of Rehabilitation Medicine
American Diabetes Association
American Foundation for the Blind
American Psychological Association
American Speech-Language-Hearing Association
Association for Education and Rehabilitation of the Blind
and Visually Impaired
Association for Retarded Citizens of the United States

Disability Rights Education and Defense Fund
Epilepsy Foundation of America
Goodwill Industries of America, Inc.
Learning Disabilities Association of America
Mental Health Law Project
National Alliance for the Mentally Ill
National Association of the Deaf
National Association of Developmental Disabilities Councils
National Association of Private Residential Resources
National Association of Protection and Advocacy Systems
National Association of Rehabilitation Facilities
National Center for Law and the Deaf
National Coalition for Cancer Survivorship
National Council of Community Mental Health Centers
National Council on Independent Living
National Easter Seal Society
National Head Injury Foundation
National Industries for the Severely Handicapped
National Mental Health Association
National Multiple Sclerosis Society
National Parent Network on Disabilities
National Spinal Cord Injury Association
Paralyzed Veterans of America
Spina Bifida Association of America
The Association for Persons with Severe Handicaps
United Cerebral Palsy Associations, Inc.
World Institute on Disability

PROJECT	MATERIALS DEVELOPMENT OBJECTIVES	PRIMARY TARGET AUDIENCES	FUNDING
JOB ACCOMMODATION	<p>TRAINING PROGRAMS AND MATERIALS ADDRESSING: WORK SCHEDULES, JOB ANALYSIS, JOB RESTRUCTURING, AND JOB REASSIGNMENT</p> <p>TRAINING PROGRAMS AND MATERIALS ADDRESSING RETOOLING, SPECIALIZED EQUIPMENT, AUXILIARY AIDS, ASSISTIVE DEVICES, AND ASSISTIVE SERVICES</p>	EMPLOYERS PERSONS WITH DISABILITIES VOC REHAB STAFF	
DISABILITY MANAGEMENT	<p>TRAINING PROGRAMS AND MATERIALS ADDRESSING: WORKMEN'S COMPENSATION, TAX INCENTIVES, LIABILITY INSURANCE, HEALTH INSURANCE, MEDICATION AT THE WORKPLACE, BENEFITS, DISCIPLINARY ACTION, NOTICES, LAY-OFFS AND TERMINATIONS</p> <p>TRAINING PROGRAMS AND MODEL DISABILITY MANAGEMENT SYSTEMS</p>	EMPLOYERS VOC REHAB STAFF PERSONS WITH DISABILITIES INSURANCE PROVIDERS	
COMMUNICATION	<p>TRAINING PROGRAMS AND MATERIALS ADDRESSING TELECOMMUNICATION (INCLUDING TELEPHONE RELAY SYSTEMS), SENSORY AIDS, SAFETY/EMERGENCY COMMUNICATION SYSTEMS, SIGNAGE, ALTERNATIVE METHODS OF COMMUNICATION, AND ASSISTIVE TECHNOLOGY</p>	EMPLOYERS SERVICE PROVIDERS PERSONS WITH DISABILITIES STATE/LOCAL GOV'T	
SELF-EMPOWERMENT	<p>TRAINING PROGRAMS AND MATERIALS ADDRESSING: ADA COVERAGE FOR FAMILIES AND INDIVIDUALS, SELF-ADVOCACY AND SELF-REPRESENTATION</p>	VOC REHAB STAFF SERVICE PROVIDERS PERSONS W/ DISABILITIES	

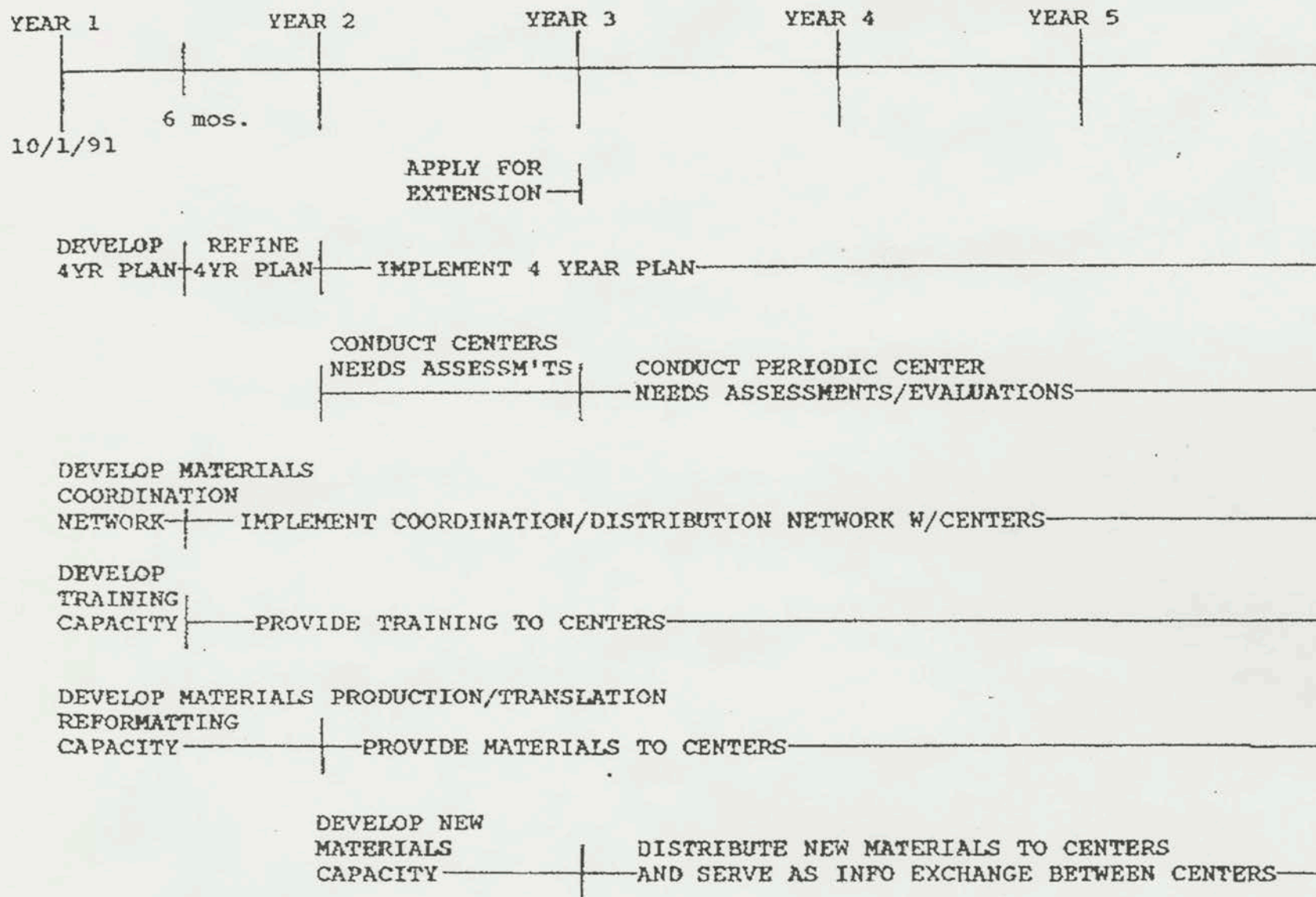
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MATERIALS DEVELOPMENT PROJECTS

PROJECT	MATERIALS DEVELOPMENT OBJECTIVES	PRIMARY TARGET AUDIENCES	FUNDING
DISABILITY AWARENESS	TRAINING PROGRAMS AND MATERIALS ADDRESSING: DISABLING CONDITIONS AND ABILITIES OF PERSONS W/DISABILITIES, STEREOTYPES, MYTHS, NEGATIVE ATTITUDES, EMPLOYEE RELATIONS, AND CUSTOMER RELATIONS	EMPLOYERS SERVICE PROVIDERS STATE/LOCAL GOV'T	
REQUIREMENTS OF THE ACT	SURVEY EXISTING INFO ON THE ADA REVISE/REFORMAT EXISTING INFO TRAINING PROGRAMS AND MATERIALS ADDRESSING NEW INFORMATION AND REFORMATTED EXISTING INFORMATION	EMPLOYERS SERVICE PROVIDERS STATE/LOCAL GOV'T VOC REHAB STAFF PERSONS WITH DISABILITIES	
ACCESSIBILITY/ PUBLIC ACCOMMODATION	TRAINING PROGRAMS AND MATERIALS ADDRESSING ACCESSIBILITY INCLUDING: SELF-ADMINISTERED SURVEYS/CHECKLISTS, DESIGN ALTERNATIVES, AND LOW-COST OPTIONS	EMPLOYERS SERVICE PROVIDERS PERSONS WITH DISABILITIES STATE/LOCAL GOV'T COMMERICAL ESTABLISHMENTS	
HIRING PROCESS	TRAINING PROGRAMS AND MATERIALS ADDRESSING: ADVERTISING, TESTING, DRUG TESTING, JOB RECRUITMENT, MEDICAL EXAMINATIONS, AND SELECTION INTERVIEW GUIDES, MODEL JOB DESCRIPTIONS AND MODEL JOB QUALIFICATIONS	EMPLOYERS SERVICE PROVIDERS PERSONS W/ DISABILITIES VOC REHAB STAFF STATE/LOCAL GOV'T	

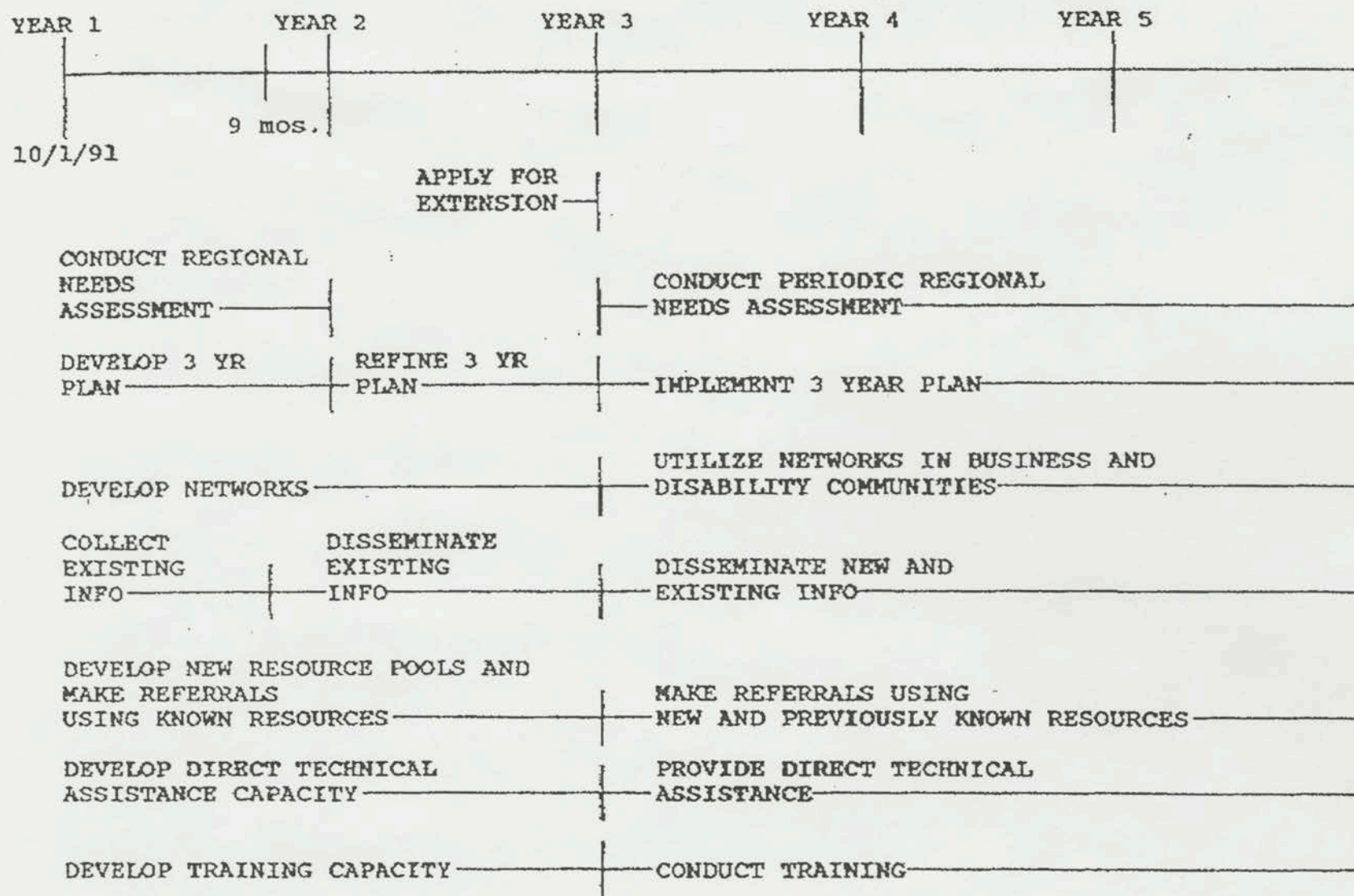
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TECHNICAL ASSISTANCE COORDINATOR



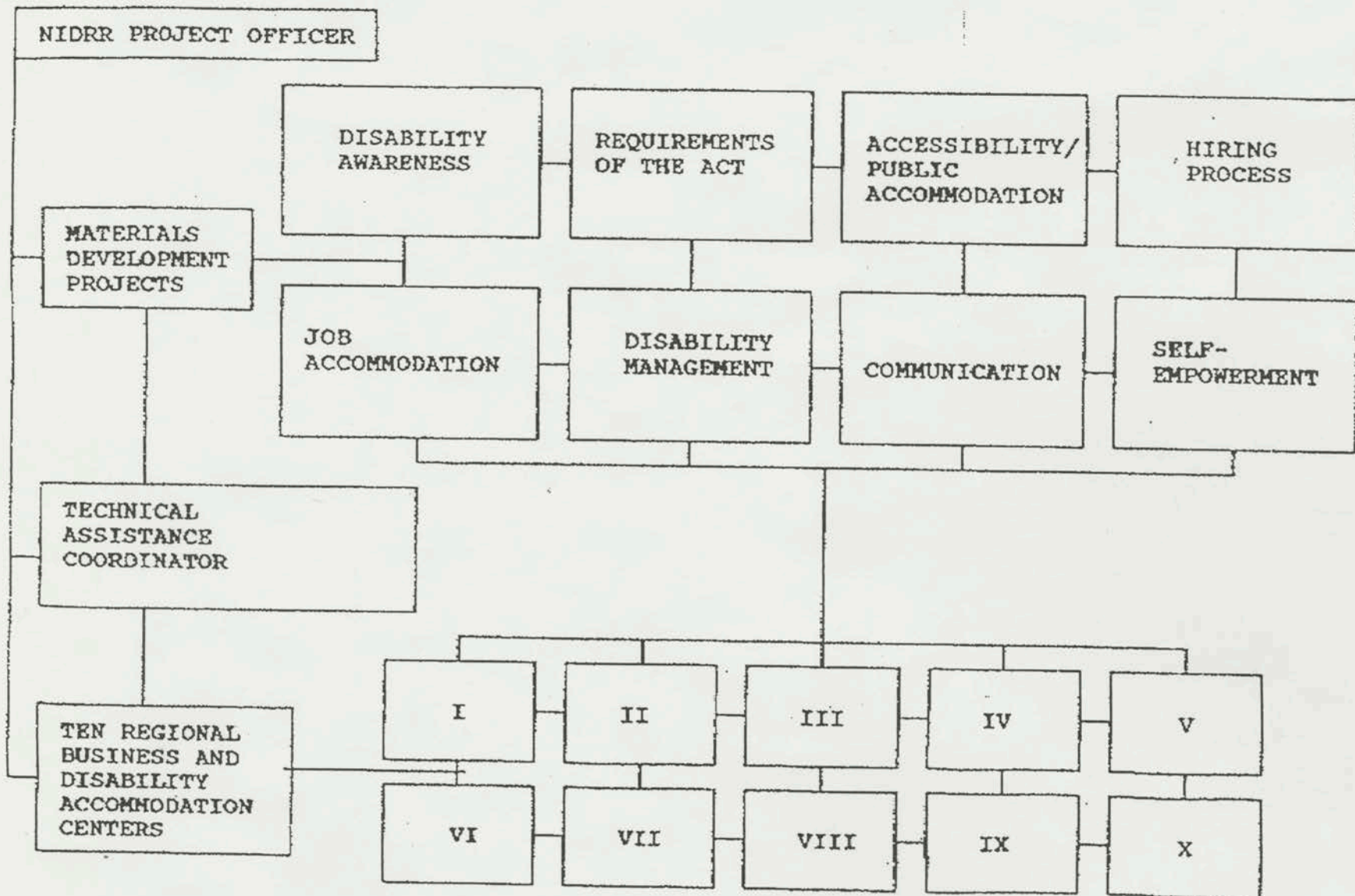
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TEN REGIONAL BUSINESS AND DISABILITY ACCOMODATION CENTERS



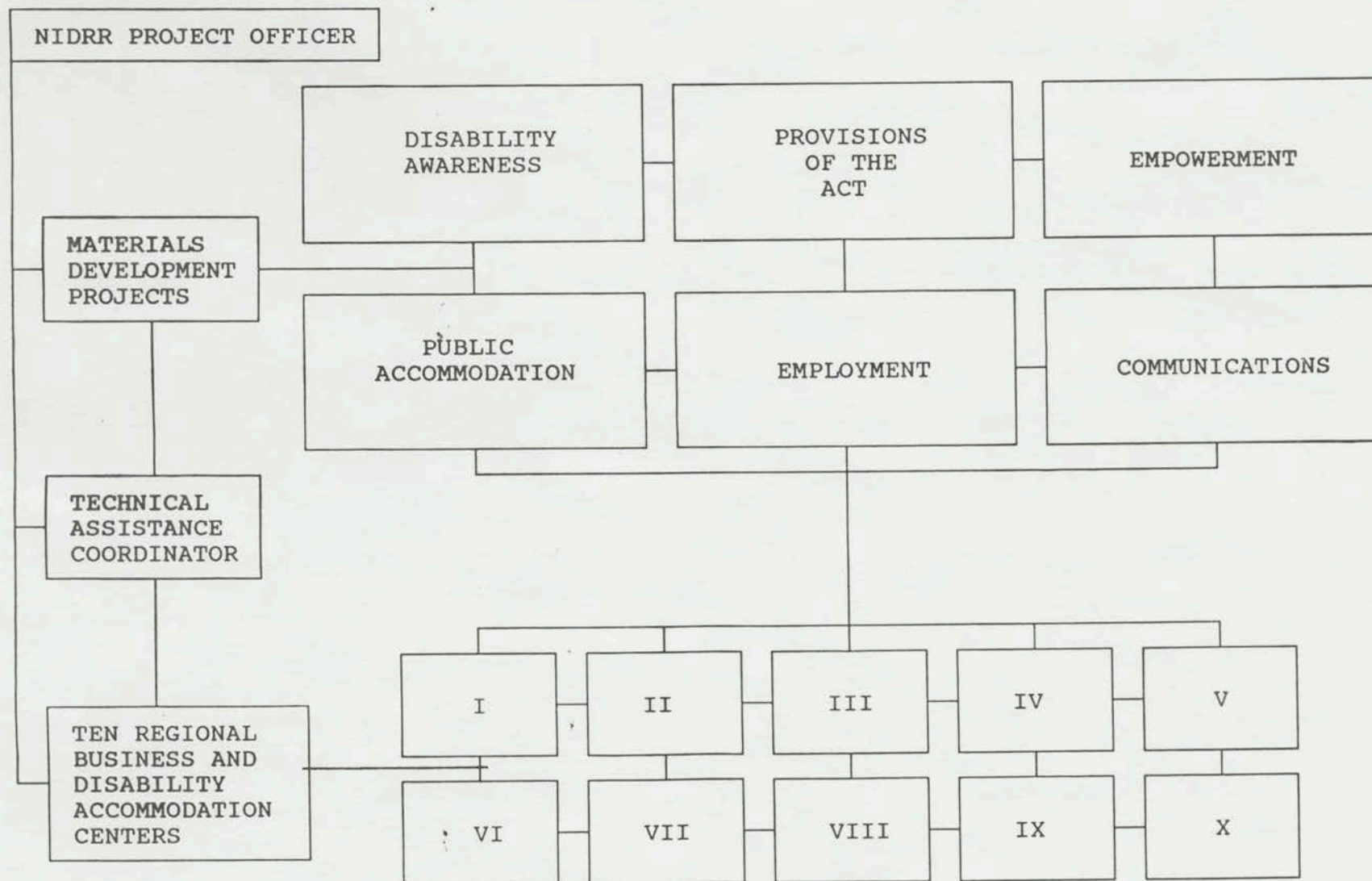
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NIDRR ADA TECHNICAL ASSISTANCE INITIATIVE



1/24

NIDRR ADA TECHNICAL ASSISTANCE INITIATIVE



Activities of the Regional Business and Disability Accommodation Centers

- 1.) Collect and disseminate existing information.
- 2.) Develop and utilize local, State and regional networks of communication.
- 3.) Develop and utilize resource pools (i.e., make referrals to consultants).
- 4.) Provide training (e.g., workshops, seminars, on-site training)
- 5.) Provide basic direct technical assistance (e.g., use of accessibility checklist).
- 6.) Provide general information to the public.

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MATERIALS DEVELOPMENT PROJECTS

PROJECT	MATERIALS DEVELOPMENT OBJECTIVES	PRIMARY TARGET AUDIENCES	FUNDING
DISABILITY AWARENESS	TRAINING PROGRAMS AND MATERIALS ADDRESSING: DISABLING CONDITIONS AND ABILITIES OF PERSONS W/DISABILITIES, STEREOTYPES, MYTHS, NEGATIVE ATTITUDES, EMPLOYEE RELATIONS, AND CUSTOMER RELATIONS	EMPLOYERS SERVICE PROVIDERS STATE/LOCAL GOV'T COMMERCIAL EST.	
PROVISIONS OF THE ACT	SURVEY EXISTING INFO ON THE ADA REVISE/REFORMAT EXISTING INFO TRAINING PROGRAMS AND MATERIALS ADDRESSING NEW INFORMATION AND REFORMATTED EXISTING INFORMATION	PERSONS WITH DISABILITIES STATE/LOCAL GOV'T SERVICE PROVIDERS COMMERCIAL EST.	
EMPOWERMENT	TRAINING PROGRAMS AND MATERIALS ADDRESSING: ADA COVERAGE FOR FAMILIES AND INDIVIDUALS, SELF-ADVOCACY AND REPRESENTATION	PERSONS WITH DISABILITIES SERVICE PROVIDERS ORGANIZATIONS OF AND FOR PERSONS PERSONS WITH DISABILITIES	
PUBLIC ACCOMMODATION	TRAINING PROGRAMS AND MATERIALS ADDRESSING ACCESSIBILITY INCLUDING: SELF-ADMINISTERED SURVEYS/CHECKLISTS, DESIGN ALTERNATIVES, AND LOW-COST OPTIONS	COMMERCIAL EST. SERVICE PROVIDERS PERSONS WITH DISABILITIES STATE/LOCAL GOV'T EMPLOYERS	

MATERIALS DEVELOPMENT PROJECTS (con't)

PROJECT	MATERIALS DEVELOPMENT OBJECTIVES	PRIMARY TARGET AUDIENCES	FUNDING
EMPLOYMENT	<p>TRAINING PROGRAMS AND MATERIALS ADDRESSING: ADVERTISING, TAX INCENTIVES DRUG TESTING, JOB RECRUITMENT, MEDICAL EXAMINATIONS, INSURANCE AND SELECTION</p> <p>INTERVIEW GUIDES, MODEL JOB DESCRIPTIONS AND MODEL JOB QUALIFICATIONS</p> <p>TRAINING PROGRAMS AND MATERIALS ADDRESSING: WORK SCHEDULES, JOB ANALYSIS, JOB RESTRUCTURING, AND JOB REASSIGNMENT</p> <p>TRAINING PROGRAMS AND MATERIALS ADDRESSING RETOOLING, SPECIALIZED EQUIPMENT, AUXILIARY AIDS, ASSISTIVE DEVICES, AND ASSISTIVE SERVICES</p>	<p>EMPLOYERS</p> <p>PERSONS WITH DISABILITIES</p> <p>STATE/LOCAL GOV'T</p>	
COMMUNICATION	<p>TRAINING PROGRAMS AND MATERIALS ADDRESSING TELECOMMUNICATION (INCLUDING TELEPHONE RELAY SYSTEMS), SENSORY AIDS, SAFETY/EMERGENCY COMMUNICATION SYSTEMS, SIGNAGE, ALTERNATIVE METHODS OF COMMUNICATION, AND ASSISTIVE TECHNOLOGY</p>	<p>PERSONS WITH DISABILITIES</p> <p>COMMERCIAL EST.</p> <p>DISABILITIES</p> <p>STATE/LOCAL GOV'T</p> <p>SERVICE PROVIDERS</p> <p>EMPLOYERS</p>	

NATIONAL ORGANIZATION ON

DISABILITY

A private, non-profit organization



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(202) 293-5960 • TDD (202) 293-5968 • FAX (202) 293-7999

October 22, 1990

The Honorable Robert J. Dole
United States Senate
Room 141, Hart Building
Washington, D.C. 20510

Dear Bob:

At the annual BusinessWeek CEO symposium here in Washington on October 12, I had the pleasure of introducing Attorney General Dick Thornburgh who spoke eloquently about the Americans with Disabilities Act and its implementation. I thought you would like to see a copy of his remarks.

That day we also announced the formation of the Disability 2000-CEO Council. A press release about the Council also is enclosed.

With all good wishes,

Sincerely,

Alan A. Reich
President

Enclosure

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Niles, Barton, & Wilmer

Bertram S. Brown, M.D.
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Department of Justice

"THE AMERICANS WITH DISABILITIES ACT:
WHAT IT MEANS TO ALL AMERICANS"

AN ADDRESS

BY

DICK THORNBURGH

ATTORNEY GENERAL OF THE UNITED STATES

TO THE

BUSINESS WEEK ANNUAL SYMPOSIUM
OF CHIEF EXECUTIVE OFFICERS

ON THE

AMERICANS WITH DISABILITIES ACT

9:30 A.M.
FRIDAY, OCTOBER 12, 1990
THE WILLARD HOTEL
WASHINGTON, D.C.

This month of October we observe National Disability Employment Awareness Month and the prospects for the future made possible by the recent passage of the Americans with Disabilities Act. I am officially here as the Attorney General to tell you about the opportunities ADA opens up. But let me first remind you that in the 1980s I was a governor -- serving two terms during a period when economic development for my state of Pennsylvania had to be our number-one priority. I think I understand what dynamics create real jobs, and how vital a better business climate is to genuine expansion and rising employment. Both in that role and in twelve years as a corporate lawyer, I've walked some of the same steep paths -- in the same enterprising direction -- as you have.

So I identify with your interest, realizing that you may have sound business questions to ask about this future I foresee -- even concerns about ADA -- questions which I trust can be allayed. The big plus is, your presence already indicates a strong focus on ADA which we find particularly promising -- those of us who are involved in implementing this landmark civil rights act.

We base our faith in this future over the next decade on two dynamics -- rapid change in technology, and progressive change in attitudes, particularly among the workforce. Let it stand as a given that technological change will continue to increase productivity by developing tremendous resources previously

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untapped. But do not miss the salient fact that one of these untapped resources -- arguably the most important in a difficult labor market -- is the human resource of Americans with disabilities. . .and their considerable talents.

These new American workers -- using modern technology, both to surmount their disabilities and to raise your output and efficiency -- will be the agents of changing attitudes. It is bound to happen. As our national workforce shifts in composition to include those two thirds of Americans with disabilities . . .and talent. . .presently not working, stereotypes and misperceptions about those with disabilities will have to change. What might once have been thought of as "charity" or an "obligatory hiring" will increasingly be seen as simply good business. Indeed, those who early seize the employment opportunities offered by ADA will find they have enhanced their competitiveness domestically and increased their markets globally.

And to this end -- speaking now for the Department of Justice -- we eagerly accept the responsibility for framing the regulations needed to aid your compliance with ADA. We accept this responsibility not as a burden, but as one more opportunity to further guarantee equal protection under the law for every citizen of this nation. My hope is that American business will see fit to do likewise in your own entrepreneurial self-interest.

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Ultimately, I do believe that is what makes us all the real beneficiaries of progress on civil rights.

This year, of course, we have had more than our share of dispute over civil rights legislation that might adversely affect business -- largely because of good-faith conflict over what many regard as fine distinctions or "legal technicalities" in the Kennedy-Hawkins bill.

I don't shun these legal arguments. I would be happy to discourse on "disparate treatment" of an individual -- which we all agree the law should fully remedy -- as opposed to "disparate impact" upon a group -- which, by all past legal principle, must first be proved to the court in a particular case before any remedy is ordered. Just as the former can lead to injustice, the latter can lead to quotas. But as convinced as I am on those points, I see them as secondary to the next great leap forward in civil rights that Congress enacted and President Bush signed into law this summer: the Americans with Disabilities Act.

The impact of ADA is not disparate, but broadening, inclusive, and -- if you will -- re-awakening. Do not let this bright moment in modern American history escape you. Let me describe its coming impact upon our country's life in straightforward but startling terms.

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Consider these demographic figures. Over thirty million Black Americans make up 12.3 per cent of our populace. Other minorities -- just over eight million -- comprise another 3.4 per cent. That total is a full 15.7 per cent of our entire population.

But 43 million Americans with disabilities represent 17 per cent of the nation. So, as a direct result of the Americans with Disabilities Act, we have just seen those empowered by our civil rights laws in this country double. And although I take these figures from the rolls of potential beneficiaries under ADA, I definitely mean it when I say that rights are what have truly doubled.

Because each time civil rights are enlarged in this country, they extend over the whole of our society. All Americans, not just minorities, are involved in every new extension of such rights. The passage of ADA is truly another emancipation -- not only for the 43 million Americans with disabilities who will directly benefit, but even more so for the rest of us -- now free to benefit from the contributions which these Americans will make to our economy, our communities, and our individual well-being.

All that is required -- from the rest of us as citizens, but particularly yourselves as leaders of business -- is action to

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comply with the ADA provisions that will allow these presently underutilized workers to bring their talents into the workplace.

A first priority, always, has been physical access for disabled individuals. We are assembled this morning at the Willard Inter-Continental Hotel. Out front, on the left as you face the hotel, runs a ramp providing easy access to the lobby for those of us using wheelchairs. All of the elevators easily accommodate wheelchairs, as do the conference rooms such as this one.

The old Willard played nineteenth-century host to American history. General Grant checked in here from Vicksburg to take over the Grand Army of the Potomac and the Civil War. He went unrecognized among the political grandees, snubbed by the desk clerk. Maybe it was downhill from there for the Willard, but ever since its grand re-opening in 1986, the new Willard has proven wisely hospitable. There are four rooms specially fitted for use by patrons with disabilities. Doors have also been built wide enough to accommodate any of us using a wheelchair, which sends a further sincere message of welcome.

In a sense, that is what our concern for those with disabilities is all about. Widening the doors -- a civil right become an architectural imperative. But not just physical doors -- please understand -- also the doors of opportunity for those

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with disabilities. And, among the broader public community, the doors of perception -- so that we all recognize the right of people with disabilities to come in. . .to mainstream society.

This final widening of the doors -- through ADA -- occurs after a long legal campaign. The Rehabilitation Act of 1973 was the first milestone, showing that doors could be physically widened, and other public access offered -- but more important, that federal employment policy could accommodate those with handicaps. Then came the Education for the Handicapped Act two years later -- Public Law 94-142 -- which gave a new generation its great opportunity.

That act set about teaching people with disabilities within the nation's mainstream school systems -- guaranteeing an appropriate educational placement in the least restrictive setting. In the ensuing fifteen years, an unsighted person or somebody with impaired hearing or mental retardation or using a wheelchair could learn right alongside others. He or she could have started somewhere between K through 12, and by now, be all the way through college. This new generation overcame both their disabilities and the prejudices, often very sympathetic prejudices -- the hardest to counter -- that their disabilities aroused. They have gotten a high school education either by diploma or certificate of completion. Many have gone on to college and even advanced degrees. And yearly they are coming into the labor market 150,000-strong. You will be pleased to

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hear they are well-educated, well-motivated, and well along in understanding what prospects life can really hold for them.

They are the first generation of Americans with disabilities who will be -- in every best sense -- fully empowered in the 1990s, and aware they are guaranteed their civil rights by ADA.

To touch all its bases, ADA overcomes our past failure to eliminate attitudinal, architectural, and communications barriers in employment, transportation, public accommodations, public services, and telecommunications. In short, it widens all the doors I have spoken of -- mandating true access for Americans with disabilities to mainstream society.

First and foremost, however, the ADA acts against job discrimination in the private sector. But we can better understand this -- as I've already emphasized -- in terms of an upgrading of the workforce made available to your businesses. At present, 58 per cent of all men with disabilities, and 80 per cent of all women, are jobless. So long as unemployment continues to be the lifelong fate of two thirds of those with disabilities, we cannot break the bind of national expenditure for dependence: somewhere between \$150 and \$300 billion annually, approaching nearly four per cent of GNP.

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As Chief Executive Officers, you are concerned about the practical results of the ADA. It is not a law either to "slap wrists" or to reap punitive damages. It is law designed to guarantee that the obvious -- or unthought of -- is not overlooked. The ADA legally requires -- following Section 504 of the 1973 Rehabilitation Act -- that the private employer make "reasonable accommodation" to the known mental or physical impairments of qualified disabled persons, so long as making that accommodation does not result in an "undue hardship" on the operations of the employer.

This, obviously -- inevitably -- raises the question of cost. But, if this new generation is all that it appears to be, any initial outlay to accommodate an employee with disabilities may well be offset by corresponding gains from his or her native abilities. Gains in education and brain power and stick-to-it-ivity could easily cancel out the expense of putting in a ramp, or assisting an unsighted or hearing-impaired employee with telecommunication equipment -- especially with computer and other technological advances in compensatory assistance.

The Department of Justice will work as a fair enforcer of the ADA. As you know, the law has built in safeguards to protect companies from undue hardship resulting from any over-zealous implementation. Many provisions cover companies making a good-faith effort to comply with the equal opportunity objective of

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the law. But I would admonish you that it would be unfair -- and unlike American business -- to seek to side-step the civil rights protections of the ADA. Those organizations which do so will be hurting themselves in the long-run.

The President's Committee on Employment of People With Disabilities has already done excellent work to show how any business -- from one to 1,000 employees -- can economically employ those "Ready, Willing, And Available." And as Attorney General, I have a role to play, under ADA, in offering technical assistance to the business community as you prepare to hire from this pool of people with disabilities. And it seems highly unlikely to me that any employer -- in a stressed labor market, skewed demographically toward the previously unemployable -- is going to undervalue any group's potential contribution. A mind, whatever its limitations or the disability of the body, is still a terrible thing to waste.

The other great widening, under ADA, is in access to general accommodations and public transportation. None of our citizens should have to face preventable obstacles and inconveniences when they go out shopping, or to the movies. What is only a curb to most of us may seem like a rugged cliff to somebody using a wheelchair.

ADA also ends barriers that people with hearing impairments face in using the telephone through auxiliary aids such as non-

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voice terminal devices. But auxiliary aids must not, the ADA further states, cause an "undue burden." A restaurant should not, for example, have to provide menus in braille to blind patrons, if the waiter is willing to read the menu -- especially a French restaurant.

It is in public transportation that ADA requires a giant step toward physical access within the near-term future -- that urban bus systems really kneel down, if you will. All newly built buses must be accessible to persons with disabilities. The ADA does not mandate retrofitting buses already in service. But 35 per cent of present urban buses are already accessible, and, for once, the potholes are on our side! Attrition and replacement will quickly bring total accessibility to the nation's inner city bus systems.

But I am now getting down to duller details, and away from the real spirit behind ADA. Let me re-iterate two important points about this new legislation. One, ADA is primarily about employment. Even its attendant provisions are in aid of employment, or for the better enjoyment of the rewards of employment. Consider transportation: suddenly the right to a seat on the bus -- an old, first cause of civil rights -- is once again vital to the right of employment. Once the struggle was not to be forced to sit in the back of the bus, on the way to work. Now the struggle is to get on the bus, period, on the way

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to work. ADA becomes, in this respect, the enabling act for this new generation of Americans with disabilities, and all those who come after.

My second and final point is that those enabled form a mighty cohort ready to make a strong contribution to our economy. And I am going to offer a profile of one young man in the Department of Justice to prove this.

Last Wednesday I invited the twelve White House Fellows to lunch. A formidable group of public-spirited men and women, let me tell you, especially in one-on-one debate with the Attorney General. The man in charge of our round table that day was our White House Fellow, Drew Batavia. Besides being a lawyer and a specialist in health care financing, Drew is an expert on productivity. Here is how he got to be one.

At age sixteen, Drew incurred an injury. When thrown from the back seat of a crashing automobile through its windshield, he woke up with only the use of his neck, mouth, other parts of his face and head -- including a very remarkable brain.

Faced with his quadraplegia, Drew decided he had better find a very cost-beneficial way of handling himself. At age 33 today, he is a graduate of Harvard Law School and Stanford Medical

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School's public health program -- the author of three books and over thirty scholarly articles.

When you go into Drew's office, just down the hall from mine, you are likely to find him tapping away at a computer keyboard with his mouthstick. Twenty-five words a minute, at least five to eight hours per day. His computer and reading stands are up on tables, raised to a level high enough to accommodate his wheelchair. At first glance, it looks. . . expensive. But as Drew points out, virtually all employees have computers and telephones. How much more does it cost to add a little height to the table legs? How much extra for a few wooden reading stands?

That's his subject: how you can actually raise productivity by hiring Americans with disabilities. But what I like even more is Drew's symbol. He has it hanging on the office wall. It is a knock-off of a famous Picasso print, showing Don Quixote charging the windmills. Everything in the print is the same -- the hot sun, the spear, the knight's chamber-pot hat, the windmill -- except for one small detail. Don Quixote is not astride a gallant steed. Don Quixote is mounted on a wheelchair.

That is the sense of purpose and determination and even daring you will find among Americans with disabilities -- especially if, and when, you have the good business sense to

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bring them into your workplace. If I might share a family experience with you, that same spunkiness in our own son Peter -- mentally retarded from an automobile accident in infancy -- enables him at age thirty, although greatly limited, to live independently of his mom and dad, to work in a workshop, bring home a paycheck, and, yes, pay taxes, just like the rest of us. Such human beings are our great resource waiting to be tapped, at whatever words per minute. And the Americans with Disabilities Act permits us all to reap the advantage.

NATIONAL ORGANIZATION ON

DISABILITY

A private, non-profit organization



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PRESS RELEASE

Contact: Mark Lewis
(202) 293-5960

NEW CEO COUNCIL FORMED TO ADVANCE OPPORTUNITIES OF DISABLED AMERICANS; BUSINESS WEEK PUBLISHER IS CHAIRMAN

Washington, D.C., October 12 - The President of the National Organization on Disability, Alan A. Reich, announced today the formation of "Disability 2000-CEO Council" comprised of chief executive officers working for the full participation and acceptance of disabled Americans, especially in the workplace.

Named Chairman of the Council was Jack Patten, Publisher, Business Week magazine.

Addressing Business Week's annual Symposium of Chief Executive Officers, Reich quoted from President Bush's charge to the business community when he signed the Americans with Disabilities Act on July 26 of this year:

"You have in your hands the key to the success of this Act. You can unlock a splendid resource of untapped human potential that, when freed, will enrich us all," Bush said.

"The Americans with Disabilities Act (ADA)," Bush emphasized, "ensures that employers covered by the Act cannot discriminate against qualified individuals with disabilities." Reich stated that the new law will open a

Expand the participation of disabled citizens and all of America gains. Isn't it time to get involved?

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range of opportunities for some eight million unemployed disabled citizens of working age who want to work.

Reich told the gathering of 150 chief executive officers here that he is "convinced that business leaders are prepared to act speedily to comply, but they need more information on the range of possibilities. They need to know of the solutions available to companies seeking to improve hiring practices and workplace accommodation. That's why the CEO Council was formed - to act as a clearinghouse and to disseminate such data to corporations."

The Council also will sponsor a referral service to give corporations updated information on contacting officials and experts to advise them on ADA compliance.

"The major goal of the CEO Council is to put at least half of those with disabilities seeking employment into jobs by the year 2000," Council Chairman Patten said in a letter to the nation's CEOs.

"I urge you to join me and the other CEOs on the Council. Your membership will signal that you back people with disabilities. You will have a chance to right an old wrong - the exclusion of the nation's largest minority," Patten added. Business Week plans to publish the list of Council members in an upcoming edition.

Introducing U.S. Attorney General Dick Thornburgh at the conference, Reich saluted him for his leadership and for his tireless efforts in support of passage of the Americans with Disabilities Act. Reich noted that in 1982 Mr. Thornburgh, as Governor of Pennsylvania, was a founding Director of the National Organization on Disability.

On a personal level, Reich, a wheelchair-user, added: "I was just out of Harvard Business School and embarked on my career in business with Polaroid Corporation. I broke my neck in a diving accident and had the experience of returning to work in a wheelchair after nine months of rehabilitation. It was the attitudes that were most difficult to overcome. It took time to regain the acceptance of fellow employees. A disability can happen to anyone at any time. It is a fact of life, and the leadership of you CEOs is essential to changing attitudes; it is vital to the effective implementation of the Americans with Disabilities Act."

The CEO Council is sponsored by the National Organization on Disability. Reich also announced that Frank Rocco will serve as advisor to the Council. Rocco heads an executive search firm in Washington, D.C. Any chief executive officer wishing to join the Council should contact Rocco at (202) 293-5960.

Small Business and the ADA: Dollars and Sense

Having a stable and fulfilling job is a basic component of the American dream. Every one of us would like to have a job that is enjoyable and stimulating and that provides us with sufficient income to meet our needs. People with disabilities are no different. People with disabilities would like to obtain jobs suited to their talents and interests, and like everyone else, they would like to secure promotions and advance in their careers. To this end, President Bush signed the Americans with Disabilities Act (ADA) into law on July 26, 1990. The law prohibits discrimination against persons with disabilities in all areas of American life, such as employment, public accommodations, transportation, and telecommunications.

One aim of the ADA is to prevent qualified individuals with disabilities from being denied jobs. Experience shows that persons with disabilities are excellent employees yet the unemployment rate for this group is the highest in the nation. Misconceptions about the abilities of persons with disabilities prevent many from the opportunity to work. Lack of employment opportunity adds to the welfare rolls and this costs all of us.

In order for tax users to become tax payers, we need policies that replace government handouts with policies that permit self determination. The opportunity to work enables people to participate in the economy as active consumers,

purchasing the goods and services they need and desire. All Americans benefit from an inclusive workforce. These are the reasons why I supported the ADA and it is why I believe it makes good business sense.

The ADA provides this country with both a challenge and an unprecedented opportunity. In the short term, some businesses will spend money to accommodate new employees or customers with disabilities. However, there is much evidence that the cost of accommodations is not exorbitant. An accommodation can be any thing from a simple environmental adjustment or modification costing nothing to a sophisticated assistive technology device such a an opticon (a device that converts printed symbols to vibrating images). The requirement to make a reasonable accommodation is not open-ended. Employers are not required to make accommodations which impose an undue hardship. Critics claim that terms such as reasonable accommodation and undue hardship are vague and will invite litigation. Such a view is incorrect.

First, the practice of reasonable accommodation is not new. Employers with federal contracts in excess of \$2500 have been making accommodations under the Rehabilitation Act since 1973. That's almost twenty years of experience in this area, and this experience shows that accommodations of reasonable cost which do not impose an undue hardship are readily achievable.

What business needs is access to information. The federal government supports such an endeavor. The Job Accommodation Network (JAN) was established in 1984 to serve as a clearinghouse in providing information on specific strategies and accommodations that have been used successfully. Initiated by the President's Committee on Employment of Persons with Disabilities, JAN has the largest database of known accommodations. Less than one percent of accommodations cost more than \$5,000. Half cost under \$500. The Job Accommodation Network is an excellent source of information for employers.

Prior to ADA's final passage, I authored an amendment to expand the work of groups like JAN by establishing a program of technical assistance for those who will be implementing the ADA. Technical assistance is critical in helping employers understand their rights and obligations under the law. Technical assistance will bring the talent and leadership of private industry to the rehabilitation process. Together, both groups can more effectively identify not only job opportunities, but also the necessary skills that would qualify people with disabilities for the jobs of today and challenges of the future.

In addition to technical assistance, Congress also created a business tax credit targeted to address financial burdens resulting from ADA accommodations. This \$5,000 tax credit coupled with the Internal Revenue Tax Code, provides small business with partial relief from monetary obligations.

My own commitment to employment of people with disabilities inspired me to create the Dole Foundation. Our organization enables the private sector to provide financial assistance to the many outstanding community employment and training programs which foster opportunities for people with disabilities to be competitively employed. Every individual has unique abilities and talents. It is essential therefore to provide opportunities that enable individuals to utilize their abilities.

The Dole Foundation, which is the only grantmaking foundation in the United States to exclusively focus on economic independence for people with disabilities, has made many contributions to the field of disability employment. The Foundation not only awards grants to many employment programs nationwide, but also focuses on education and public awareness activities to address the antiquated attitudinal barriers preventing people with disabilities from locating and obtaining jobs.

The difficulty faced by many people with disabilities, however, is that they often not given the opportunity to demonstrate their talents and abilities to perform certain jobs. Instead myths and stereotypes regarding the person's inability to perform the job, or simply fears about hiring a person with a disability for a particular job, preclude the individual from receiving offers of employment or promotion.

In the last ten years advances in technology and the desire of people with disabilities to be employed in businesses have resulted in tens of thousands of people working in the private sector. Big business has provided leadership in this area: IBM, Xerox, AT&T, Boeing, DuPont, Marriott, and McDonalds employ people with disabilities. DuPont conducts routine overall comparison surveys and consistently finds employees with disabilities equivalent to other employees in job performance, attendance and safety.

Thousands of small to medium size companies have had similar experiences. Kreonite, a small business in Wichita employees approximately 228 workers, 26 of whom are workers with disabilities. Kreonite is an example of a small business which is proactive in hiring people with disabilities for sound business reasons and which has embraced the goals of the ADA.

The ADA makes good business sense because right now small businesses are paying to keep potential employees--persons with disabilities--on the welfare rolls. It makes good economic sense to invest in making accommodations in the workplace and in the marketplace. By investing in accommodations we create incentives for greater productivity and consumerism. Employees who have disabilities are safe dependable workers according to the Dupont studies on the employment of persons with disabilities (Equal to the task).

The ADA is an important beginning giving us both a framework and a mandate from which to proceed. However to meet the non-discrimination and increased employment goals of the ADA, programs must continue to provide critical technical assistance to the business community. I continue to have concerns about the implementation of the Americans with Disabilities Act. To fulfill its mandates will require new attitudes and new supports for those who must implement the changes it requires. My support for the ADA buttressed by the ingenuity and spirit of the American businessman. As businesses grapple with the complexities and nuances of implementing the law, we in Congress will continue to support initiatives like targeted tax credits aimed at eliminating barriers employers face in meeting the requirements of the ADA.

NFIB

National Federation of
Independent Business

Americans with Disabilities Act S. 933 as Reported

CURRENT LEGISLATION

The Americans with Disabilities Act (ADA) was introduced on May 9, 1989 in the Senate and the House. The bill seeks "to establish a clear and comprehensive prohibition of discrimination on the basis of disability" in employment, public accommodations, private businesses, public services, transportation and telecommunications. On August 2, 1989, S. 933 was reported out of the Senate Labor and Human Resources Committee by a vote of 16-0. However, several senators referred to problems that still needed to be addressed.

BACKGROUND

Currently, federal contractors and recipients of federal aid must comply with the non-discrimination and affirmative action requirements of Sections 503 and 504 of the Rehabilitation Act to accommodate the disabled in return for receiving federal monies.

The ADA bill goes much farther than the Rehabilitation Act in that it applies to the vast majority of businesses in America even though these businesses receive no quid pro quo from the government. The ADA bill imposes costly requirements on businesses and provides for unlimited damage awards even if the discrimination was unintentional. And the bill is so broadly worded that business owners will never know if they are in compliance with the law.

ACTION NEEDED

A number of positive modifications were made in the Committee compromise bill, particularly in the employment provisions. However, much remains to be done to fairly balance the needs of the disabled with the ability of business owners to meet those needs. Below are several points that merit consideration and action.

1. A business owner can be forced to pay up to \$50,000 for the first violation and \$100,000 for subsequent violations plus unlimited monetary damages for not accommodating a customer, client or visitor with a disability. No administrative remedy is available under this section of the bill, unlike the employment section of the bill and prior civil rights laws. Keep in mind that one half of all businesses in America start up with less than \$20,000 in total capital.

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The Guardian of
Small Business

2. The ADA bill covers 900 types of disabilities. A business owner must accommodate all 900 types before any individual requests accommodation. For example, a business owner will have to purchase equipment for the deaf or provide a trained interpreter even if a hearing impaired person never enters the business. The bill does not use the more reasonable standard of addressing a known disability, but rather places the burden on the business owner to prepare for every possibility.
3. No differentiation is made between willful refusal to accommodate the disabled and unintentional violations of the law. It would be appropriate to differentiate between the two, providing for administrative relief in unintentional cases and reserving higher penalties for egregious cases.
- ✓4. A small business exemption is included in the employment section of the bill, as is present in past civil rights laws. However, there is no small business exemption with respect to the public accommodations section (accommodating customers, clients, and visitors). Since no studies have been conducted to determine the cost of compliance in this sweeping legislation, it would be reasonable and fair to include an exemption at this time.
5. No recognition of a good faith effort on the part of the business owner is included in the ADA bill. As presently drafted, a business owner could be sued if the owner fails to provide a specific type of accommodation even if a good faith effort is made to provide for other types.
6. The ADA bill requires retrofitting of existing structures when the structures are altered. However, the bill does not define what constitutes an alteration. A better approach would be to institute a standard of 50% of the value of the building, such as that incorporated in Pennsylvania law. This would give a business owner a clear understanding of what is expected.
- ⑦ No incentives are included in the bill to assist a business owner with voluntary compliance. Currently, Section 190 of the IRS Code permits a \$35,000/year deduction for structural changes to accommodate the disabled. The cap should be lifted and the deduction should be broadened to include non-structural types of accommodations required by the bill such as raised desks, varied counter heights, wider aisles and the like.
8. In new construction, accommodation must be made for all "potential places of employment". However, the term is not defined. According to proponents of the bill, this might include catwalks, boiler rooms, stockrooms and the like. As currently drafted, compliance will be impossible without clear guidelines.

9. The bill retains language that states a business owner can be sued if a disabled person believes discrimination is "about to" occur. Such broad language needs to be dropped or significantly narrowed to clearly state what is intended at the outset.
10. The bill states that reasonable accommodation must be made unless it creates an undue hardship. However, the definition of undue hardship, an action requiring "significant difficulty or expense", is so subjective that no business owner will ever know when the requirements of the bill are met. While attempts have been made to clarify this language, they have not succeeded as yet. Further modification is necessary.

CONCLUSION

The purpose of civil rights legislation is to provide fairness. Unfortunately, the ADA bill provides access to the disabled at the expense of others. While much can and should be done to assist the disabled, fairness for all Americans should be the guiding principle. Appropriate modifications in the bill can lead to this result.

Final

RESPONSE TO NFIB MEMORANDUM CONCERNING THE AMERICANS WITH DISABILITIES ACT OF 1989

Following is a summary of statements made by the National Federation of Independent Businesses (NFIB) in a recent memo regarding the Americans with Disabilities Act (ADA), and responses based on the provisions of the bill.

1. NFIB statement: A business owner could be forced to pay "up to \$50,000 for the first violation and \$100,00 for subsequent violations plus unlimited monetary damages" for not accommodating a customer with a disability.

Response: This statement is completely misleading. The NFIB's description ignores the major compromise sought and achieved by the Bush Administration before it lent its support to the ADA. Under that compromise, the right of individual plaintiffs to bring large damage actions against employers or businesses was deleted from the bill. In its place, the Administration suggested that authority be given solely to the Attorney General to bring suits where there was a demonstrated pattern or practice of discrimination. In those cases, limited damages would be available: a court could assess defined civil penalties of up to \$50,000 for the first violation and up to \$100,00 for subsequent violations, if the court concluded that it would "vindicate the public interest." In addition, if the Attorney General requested it, monetary damages could be given to the aggrieved person. The ADA specifically does not allow individual plaintiffs to bring actions for "unlimited monetary damages," as suggested by the NFIB. (See ADA, sec. 308, pp. 85-87; Committee Report, pp. 76-77).

2. NFIB concern: Employees who use drugs casually cannot be fired. An employee who causes an accident in the workplace while under the influence of drugs or alcohol can avoid all sanctions such as firing or demotion by claiming he is addicted to drugs.

Response: Both of these statements are flat misstatements of the ADA. As a result of the insistence of the Administration and others, there was extensive discussion and modification of the coverage of drug addicts and alcoholics under the ADA in order to ensure that nothing in the ADA would be contrary to the goal of achieving drug-free workplaces. The ADA therefore explicitly allows employers to take sanctions against those who use illegal drugs or alcohol in the workplace and against those who are simply under the influence of illegal drugs

or alcohol. In addition, the ADA explicitly allows employers to conduct drug tests of applicants and employees and to make employment decisions based on those tests. The NFIB's hypothetical is, in fact, explicitly rejected by the ADA. (See ADA, sec. 103(c), pp. 52-53; Committee Report, pp. 40-42).

3. NFIB statement: A business owner will have to accommodate 900 types of disabilities under the ADA; a business owner will have to make all kinds of accessibility modifications (provide ramps, wider aisles) even if a "wheelchair-bound person" never enters the business; owners will have to provide telecommunication devices for the deaf (TDD's) and interpreters for the blind "upon request."

Response: The ADA has a carefully thought-out framework for providing access to businesses for people with disabilities. This framework is based directly on Section 504 of the Rehabilitation Act of 1973, a law which has operated without difficulty or major expense for 15 years. Just like Section 504, the ADA covers all people with "physical or mental impairments" (the bill does not list 900 disabilities) and requires that businesses modify policies or provide additional aids for people with disabilities if such actions would not place an undue burden on the business. An owner does not have to guess about the modification or aid a person with a particular disability may need -- the person will usually make that need clear. Further, owners do not have to provide TDDs and interpreters "upon request." The ADA explicitly provides that such aids must be provided only if they do not place an undue burden on the business, which includes consideration of financial cost. [See especially Committee Report, p. 64, noting that the Committee does not intend that individual stores and businesses must provide TDD's.) Finally, the physical access requirements for existing businesses are minimal under the ADA. The bill explicitly provides that such changes must be made only if they are "able to be carried out without much difficulty or expense." These minimal changes should be made regardless of whether a person who uses a wheelchair has ever entered the business in the past. In fact, the reason for making these minimal changes is to ensure that people who have not even attempted to enter a business in the past because of accessibility problems can now gain access. (See ADA, sec. 301(5), 302(b)(2)(ii)-(iii), pp. 70, 74-75; Committee Report, pp. 63-66.)

4. NFIB statement: There is no differentiation made in the ADA between "willful refusal to accommodate the disabled and unintentional violations of the law." Such a distinction should be made, with "higher penalties for egregious cases."

Response: The ADA is patterned directly on Section 504,

which does not include higher penalties for willful violations. Under Section 504, there have not usually been instances of "wilful refusals" to accommodate people with disabilities. Rather, most cases deal with whether an accommodation would be effective and whether it would pose an undue burden. In any event, it is disingenuous, and indeed somewhat illogical, to recommend "higher penalties" under the ADA for egregious, willful violations. Under the compromise ADA, the right to seek any type of monetary penalties, including any form of punitive damages, has been removed for individual plaintiffs. Therefore, the only remedy under the ADA for plaintiffs, for any type of violation, is injunctive relief--for which it is difficult to create "higher" and "lower" types. If the NFIB wishes to recommend that punitive damages for egregious cases be reinserted in the bill for willful violations, it should present the suggestion in that form.

5. NFIB statement: The "small business exemption" in the bill is inadequate. While businesses have an exemption in the employment section of the ADA (employers with 15 or fewer employees are not covered), there is no exemption for the public accommodations section of the bill.

Response: The small business exemptions in the ADA track the exemptions that exist in other civil rights laws. Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, sex, religion or national origin, exempts employers with 15 or fewer employees. The ADA adopts the same exemption. By contrast, Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations on the basis of race, religion or national origin, does not have a small business exemption. This differentiation is logical: the point of a public accommodations provision is to ensure that people with disabilities (or people of a certain race) can gain access into public places, such as restaurants, movie theatres and stores. The fact that such a business may have only five or ten employees is irrelevant to the issue of providing access. To the extent that the NFIB is concerned about the requirement to provide auxiliary aids for people with disabilities, the ADA effectively incorporates a small business exemption in the public accommodations area by not requiring such provisions if they would impose an undue burden. Consideration of the size of the business and the cost of the accommodation are the explicit factors that are to be taken into account in deciding whether an action would be an undue burden. In addition, as part of the compromise with the Administration, the concerns of small businesses were taken into account in the area of new construction, by providing an exemption for installing elevators in facilities that are less than three stories high or have less than 3,000 square feet per story. (See ADA, sec. 101(4) and (9); 302(b)(2)(A), 302(b)(2)(A)(vi) and

303(b), p. 44 and pp. 46-47; p. 74 and 76.)

6. NFIB statement: No recognition of a "good faith effort" is made in the ADA. A business owner could be sued "if the owner fails to provide a specific type of accommodation even if a good faith effort was being made to provide for other types."

Response: This statement is misleading. As the Committee Report makes clear in great detail, an accommodation must simply meet two basic requirements: it must achieve its purpose (that is, it must allow the person to perform the essential functions of the job), and it may not impose an undue hardship. Within those two requirements, the employer has great flexibility to decide what accommodation it chooses to provide. If an accommodation achieves its purpose, an employee cannot get a court to substitute another accommodation which he or she may have preferred. As the Committee Report states clearly: "In situations where there are two effective accommodations, the employer may choose the accommodation that is less expensive or easier for the employer to implement as long as the selected accommodation provides meaningful equal employment opportunity." See Committee Report, p. 35. The same is true for modification of policies and provision of aids under the public accommodations section. As the Report makes clear, for example, a restaurant would not be required to provide menus in braille if it provided a waiter or other person who was willing to read the menu. Report, p. 63. Therefore, contrary to the NFIB's implication, there is not only one accommodation or aid that is the "right" accommodation under the ADA, with the unlucky employer who has in "good faith" provided another reasonable accommodation or aid suddenly discovering in court that it has not chosen the magical "right" one. Employers and businesses have flexibility under the ADA to provide a range of effective accommodations or aids.

7. NFIB statement: The ADA requires retrofitting of existing structures when the structures are "altered," but the bill "does not define what constitutes an alteration." This makes it difficult for owners to know how to comply with the law.

Response: This statement is misleading. The bill provides specific guidance with regard to what type of alterations are covered, the Committee Report provides further guidance, and regulations to be issued by the Attorney General will, as regulations always do, provide yet more guidance in probably great detail. We think it is safe to say that lack of information and clarity will not be the barrier to compliance in this area. The bill provides that "structural alterations" that "affect the usability of the facility" require accessible altered portions and "major structural alterations" that "affect the usability of the facility" require accessibility of the services

to the altered portions. See ADA, sec.302(b)(2)(A)(vi), p. 76. The Committee Report explains that the term "structural" means "elements that are a permanent or fixed part of the building, such as walls, suspended ceilings, floors, or doorways." The Report further explains that "major structural alterations" refers to "structural alterations or additions that affect the primary functional areas of a building, e.g., the entrance, a passageway to an area in the building housing a primary function, or the areas of primary functions themselves. For example, structural alteration to a utility room in an office building would not be considered major." Committee Report, p. 67.

8. NFIB statement: No incentives are included in the ADA to help a business owner with voluntary compliance. The current tax deduction of \$35,000/year for structural changes is inadequate.

Response: The issue of providing financial assistance to businesses who make changes for physical access is, and should be, separate from establishing in the law the basic civil rights for people with disabilities. Section 504 of the Rehabilitation Act did not provide extra financial assistance when it established its requirements. The \$35,000/year deduction currently in the tax code, which was sponsored by Senator Dole, is an excellent start for the separate issue of providing assistance to business owners, and the NFIB is encouraged to work with the sponsors of the ADA as we explore further alternatives.

9. NFIB statement: In new construction, "accommodation" must be made for all "potential places of employment." However, this term is "poorly defined" and may include places such as boiler rooms and stockrooms.

Response: The term "potential places of employment" is defined in the bill and further explained in the Committee Report. As a preliminary matter, there is no requirement of "accommodation" for potential places of employment. At the Administration's request, it was clarified in the bill that the term "potential places of employment" was relevant only for purposes of new construction. "Potential places of employment" are defined in the statute as places that are intended for nonresidential use (i.e., that are intended for commercial use) and whose operations affect commerce. The purpose of the provision is straightforward: there are many new buildings that, at the time of design and construction, do not yet have established tenants that would qualify as "public accommodations" under the ADA, but are simply designed for some commercial use. This provision makes clear that, for purposes of new construction, such places must be built accessible so that when

business tenants ultimately occupy the building, it will already be accessible. The Committee Report further explains that regulations concerning "potential places of employment" will "cover the same areas in a building as existing design standards. Thus, unusual spaces that are not duty stations, such as catwalks and fan rooms, would continue to lie outside the scope of design standards." Because every state currently has in place design standards for construction, there will be guidance in this area for compliance. (See ADA, sec. 301(2), and 303(a), p. 67 and p. 79; Committee Report, p. 69.)

10. NFIB statement: The ADA provides that reasonable accommodation must be made unless it creates an undue hardship. However, the definition of undue hardship is "so subjective that no business owner will ever know when the requirements of the bill are met."

Response: This statement flies directly in the face of 15 years of experience under Section 504 of the Rehabilitation Act of 1973 and ignores major modifications made in the compromise ADA. Based on requests from the business community, the ADA introduced this year deleted a new standard that had been used in last year's ADA and returned to the terminology and standard of Section 504. That standard requires that accommodations that cause an "undue hardship" need not be undertaken. This change was made so that businesses could draw on the 15 years of experience and caselaw under Section 504 so that they would know "when the requirements of the bill were met." In response to requests from the Administration and the business community, the term "undue hardship" was further defined in the bill to include a specific standard (actions requiring "significant difficulty or expense") and to explicitly include the three factors set forth in the Section 504 regulations (size of business, type of operation and cost of accommodation). The standard and practice under the ADA will thus be the same as that already clearly set forth and applied under Section 504 for the past 15 years.

Dear Colleague:

The National Federation of Independent Businesses (NFIB) recently circulated a memo describing a number of alleged problems with S. 933, the Americans with Disabilities Act of 1989 (ADA). Each of those concerns appears to be based on either an misreading or misinterpretation of the ADA. In order to facilitate your review of the actual provisions of the ADA, which the Senate will be considering shortly, we have prepared a memorandum explaining how the concerns raised by the NFIB are, in fact, met by the legislation. That memo is attached for your review.

If you have any further questions, please do not hesitate to contact our staff: . We look forward to passing, with your help, a historic piece of legislation for people with disabilities and for all of America.

Sincerely,

9/6/89

TO: PEOPLE INTERESTED IN THE AMERICANS WITH DISABILITIES ACT
FROM: SENATE LABOR COMMITTEE AND SUBCOMMITTEE STAFF
RE: RESPONSE TO THE NFIB MEMO ON THE ADA

The National Federation of Independent Businesses (NFIB) recently circulated a memo describing a number of alleged problems with S. 933, the Americans with Disabilities Act of 1989 (ADA). This memo explains how each of those concerns are, in fact, met by the legislation. Indeed, every single one of the alleged concerns seems to be based on either a misreading or a misinterpretation of the bill.



National Federation of
Independent Business

Americans with Disabilities Act S. 933 as Reported

CURRENT LEGISLATION

The Americans with Disabilities Act (ADA) was introduced on May 9, 1989 in the Senate and the House. The bill seeks "to establish a clear and comprehensive prohibition of discrimination on the basis of disability" in employment, public accommodations, private businesses, public services, transportation and telecommunications. On August 2, 1989, S. 933 was reported out of the Senate Labor and Human Resources Committee by a vote of 16-0. However, several senators referred to problems that still needed to be addressed.

BACKGROUND

Currently, federal contractors and recipients of federal aid must comply with the non-discrimination and affirmative action requirements of Sections 503 and 504 of the Rehabilitation Act to accommodate the disabled in return for receiving federal monies.

The ADA bill goes much farther than the Rehabilitation Act in that it applies to the vast majority of businesses in America even though these businesses receive no quid pro quo from the government. The ADA bill imposes costly requirements on businesses and provides for unlimited damage awards even if the discrimination was unintentional. And the bill is so broadly worded that business owners will never know if they are in compliance with the law.

ACTION NEEDED

A number of positive modifications were made in the Committee compromise bill, particularly in the employment provisions. However, much remains to be done to fairly balance the needs of the disabled with the ability of business owners to meet those needs. Below are several points that merit consideration and action.

1. A business owner can be forced to pay up to \$50,000 for the first violation and \$100,000 for subsequent violations plus unlimited monetary damages for not accommodating a customer, client or visitor with a disability. No administrative remedy is available under this section of the bill, unlike the employment section of the bill and prior civil rights laws. Keep in mind that one half of all businesses in America start up with less than \$20,000 in total capital.

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The Guardian of
Small Business

2. The ADA bill covers 900 types of disabilities. A business owner must accommodate all 900 types before any individual requests accommodation. For example, a business owner will have to purchase equipment for the deaf or provide a trained interpreter even if a hearing impaired person never enters the business. The bill does not use the more reasonable standard of addressing a known disability, but rather places the burden on the business owner to prepare for every possibility.
3. No differentiation is made between willful refusal to accommodate the disabled and unintentional violations of the law. It would be appropriate to differentiate between the two, providing for administrative relief in unintentional cases and reserving higher penalties for egregious cases.
- ✓ 4. A small business exemption is included in the employment section of the bill, as is present in past civil rights laws. However, there is no small business exemption with respect to the public accommodations section (accommodating customers, clients, and visitors). Since no studies have been conducted to determine the cost of compliance in this sweeping legislation, it would be reasonable and fair to include an exemption at this time.
5. No recognition of a good faith effort on the part of the business owner is included in the ADA bill. As presently drafted, a business owner could be sued if the owner fails to provide a specific type of accommodation even if a good faith effort is made to provide for other types.
6. The ADA bill requires retrofitting of existing structures when the structures are altered. However, the bill does not define what constitutes an alteration. A better approach would be to institute a standard of 50% of the value of the building, such as that incorporated in Pennsylvania law. This would give a business owner a clear understanding of what is expected.
- ⑦ 7. No incentives are included in the bill to assist a business owner with voluntary compliance. Currently, Section 190 of the IRS Code permits a \$35,000/year deduction for structural changes to accommodate the disabled. The cap should be lifted and the deduction should be broadened to include non-structural types of accommodations required by the bill such as raised desks, varied counter heights, wider aisles and the like.
8. In new construction, accommodation must be made for all "potential places of employment". However, the term is not defined. According to proponents of the bill, this might include catwalks, boiler rooms, stockrooms and the like. As currently drafted, compliance will be impossible without clear guidelines.

9. The bill retains language that states a business owner can be sued if a disabled person believes discrimination is "about to" occur. Such broad language needs to be dropped or significantly narrowed to clearly state what is intended at the outset.
10. The bill states that reasonable accommodation must be made unless it creates an undue hardship. However, the definition of undue hardship, an action requiring "significant difficulty or expense", is so subjective that no business owner will ever know when the requirements of the bill are met. While attempts have been made to clarify this language, they have not succeeded as yet. Further modification is necessary.

CONCLUSION

The purpose of civil rights legislation is to provide fairness. Unfortunately, the ADA bill provides access to the disabled at the expense of others. While much can and should be done to assist the disabled, fairness for all Americans should be the guiding principle. Appropriate modifications in the bill can lead to this result.

RESPONSE TO NFIB MEMORANDUM CONCERNING THE AMERICANS WITH
DISABILITIES ACT OF 1989

Following is a summary of statements made by the National Federation of Independent Businesses (NFIB) in a recent memo regarding the Americans with Disabilities Act (ADA), and responses based on the provisions of the bill.

1. NFIB statement: A business owner could be forced to pay "up to \$50,000 for the first violation and \$100,00 for subsequent violations plus unlimited monetary damages" for not accommodating a customer with a disability.

Response: This statement is completely misleading. The NFIB's description ignores the major compromise sought and achieved by the Bush Administration before it lent its support to the ADA. Under that compromise, the right of individual plaintiffs to bring large damage actions against employers or businesses was deleted from the bill. In its place, the Administration suggested that authority be given solely to the Attorney General to bring suits where there was a demonstrated pattern or practice of discrimination. In those cases, limited damages would be available: a court could assess defined civil penalties of up to \$50,000 for the first violation and up to \$100,00 for subsequent violations, if the court concluded that it would "vindicate the public interest." In addition, if the Attorney General requested it, monetary damages could be given to the aggrieved person. The ADA specifically does not allow individual plaintiffs to bring actions for "unlimited monetary damages," as suggested by the NFIB. (See ADA, sec. 308, pp. 85-87; Committee Report, pp. 76-77).

2. NFIB concern: Employees who use drugs casually cannot be fired. An employee who causes an accident in the workplace while under the influence of drugs or alcohol can avoid all sanctions such as firing or demotion by claiming he is addicted to drugs.

Response: Both of these statements are flat misstatements of the ADA. As a result of the insistence of the Administration and others, there was extensive discussion and modification of the coverage of drug addicts and alcoholics under the ADA in order to ensure that nothing in the ADA would be contrary to the goal of achieving drug-free workplaces. The ADA therefore explicitly allows employers to take sanctions against those who use illegal drugs or alcohol in the workplace and against those who are simply under the influence of illegal drugs

or alcohol. In addition, the ADA explicitly allows employers to conduct drug tests of applicants and employees and to make employment decisions based on those tests. The NFIB's hypothetical is, in fact, explicitly rejected by the ADA. (See ADA, sec. 103(c), pp. 52-53; Committee Report, pp. 40-42).

3. NFIB statement: A business owner will have to accommodate 900 types of disabilities under the ADA; a business owner will have to make all kinds of accessibility modifications (provide ramps, wider aisles) even if a "wheelchair-bound person" never enters the business; owners will have to provide telecommunication devices for the deaf (TDD's) and interpreters for the blind "upon request."

Response: The ADA has a carefully thought-out framework for providing access to businesses for people with disabilities. This framework is based directly on Section 504 of the Rehabilitation Act of 1973, a law which has operated without difficulty or major expense for 15 years. Just like Section 504, the ADA covers all people with "physical or mental impairments" (the bill does not list 900 disabilities) and requires that businesses modify policies or provide additional aids for people with disabilities if such actions would not place an undue burden on the business. An owner does not have to guess about the modification or aid a person with a particular disability may need -- the person will usually make that need clear. Further, owners do not have to provide TDDs and interpreters "upon request." The ADA explicitly provides that such aids must be provided only if they do not place an undue burden on the business, which includes consideration of financial cost. [See especially Committee Report, p. 64, noting that the Committee does not intend that individual stores and businesses must provide TDD's.) Finally, the physical access requirements for existing businesses are minimal under the ADA. The bill explicitly provides that such changes must be made only if they are "able to be carried out without much difficulty or expense." These minimal changes should be made regardless of whether a person who uses a wheelchair has ever entered the business in the past. In fact, the reason for making these minimal changes is to ensure that people who have not even attempted to enter a business in the past because of accessibility problems can now gain access. (See ADA, sec. 301(5), 302(b)(2)(ii)-(iii), pp. 70, 74-75; Committee Report, pp. 63-66.)

4. NFIB statement: There is no differentiation made in the ADA between "willful refusal to accommodate the disabled and unintentional violations of the law." Such a distinction should be made, with "higher penalties for egregious cases."

Response: The ADA is patterned directly on Section 504,

which does not include higher penalties for willful violations. Under Section 504, there have not usually been instances of "wilful refusals" to accommodate people with disabilities. Rather, most cases deal with whether an accommodation would be effective and whether it would pose an undue burden. In any event, it is disingenuous, and indeed somewhat illogical, to recommend "higher penalties" under the ADA for egregious, willful violations. Under the compromise ADA, the right to seek any type of monetary penalties, including any form of punitive damages, has been removed for individual plaintiffs. Therefore, the only remedy under the ADA for plaintiffs, for any type of violation, is injunctive relief--for which it is difficult to create "higher" and "lower" types. If the NFIB wishes to recommend that punitive damages for egregious cases be reinserted in the bill for willful violations, it should present the suggestion in that form.

5. NFIB statement: The "small business exemption" in the bill is inadequate. While businesses have an exemption in the employment section of the ADA (employers with 15 or fewer employees are not covered), there is no exemption for the public accommodations section of the bill.

Response: The small business exemptions in the ADA track the exemptions that exist in other civil rights laws. Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, sex, religion or national origin, exempts employers with 15 or fewer employees. The ADA adopts the same exemption. By contrast, Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations on the basis of race, religion or national origin, does not have a small business exemption. This differentiation is logical: the point of a public accommodations provision is to ensure that people with disabilities (or people of a certain race) can gain access into public places, such as restaurants, movie theatres and stores. The fact that such a business may have only five or ten employees is irrelevant to the issue of providing access. To the extent that the NFIB is concerned about the requirement to provide auxiliary aids for people with disabilities, the ADA effectively incorporates a small business exemption in the public accommodations area by not requiring such provisions if they would impose an undue burden. Consideration of the size of the business and the cost of the accommodation are the explicit factors that are to be taken into account in deciding whether an action would be an undue burden. In addition, as part of the compromise with the Administration, the concerns of small businesses were taken into account in the area of new construction, by providing an exemption for installing elevators in facilities that are less than three stories high or have less than 3,000 square feet per story. (See ADA, sec. 101(4) and (9); 302(b)(2)(A), 302(b)(2)(A)(vi) and

303(b), p. 44 and pp. 46-47; p. 74 and 76.)

6. NFIB statement: No recognition of a "good faith effort" is made in the ADA. A business owner could be sued "if the owner fails to provide a specific type of accommodation even if a good faith effort was being made to provide for other types."

Response: This statement is misleading. As the Committee Report makes clear in great detail, an accommodation must simply meet two basic requirements: it must achieve its purpose (that is, it must allow the person to perform the essential functions of the job), and it may not impose an undue hardship. Within those two requirements, the employer has great flexibility to decide what accommodation it chooses to provide. If an accommodation achieves its purpose, an employee cannot get a court to substitute another accommodation which he or she may have preferred. As the Committee Report states clearly: "In situations where there are two effective accommodations, the employer may choose the accommodation that is less expensive or easier for the employer to implement as long as the selected accommodation provides meaningful equal employment opportunity." See Committee Report, p. 35. The same is true for modification of policies and provision of aids under the public accommodations section. As the Report makes clear, for example, a restaurant would not be required to provide menus in braille if it provided a waiter or other person who was willing to read the menu. Report, p. 63. Therefore, contrary to the NFIB's implication, there is not only one accommodation or aid that is the "right" accommodation under the ADA, with the unlucky employer who has in "good faith" provided another reasonable accommodation or aid suddenly discovering in court that it has not chosen the magical "right" one. Employers and businesses have flexibility under the ADA to provide a range of effective accommodations or aids.

7. NFIB statement: The ADA requires retrofitting of existing structures when the structures are "altered," but the bill "does not define what constitutes an alteration." This makes it difficult for owners to know how to comply with the law.

Response: This statement is misleading. The bill provides specific guidance with regard to what type of alterations are covered, the Committee Report provides further guidance, and regulations to be issued by the Attorney General will, as regulations always do, provide yet more guidance in probably great detail. We think it is safe to say that lack of information and clarity will not be the barrier to compliance in this area. The bill provides that "structural alterations" that "affect the usability of the facility" require accessible altered portions and "major structural alterations" that "affect the usability of the facility" require accessibility of the services

to the altered portions. See ADA, sec.302(b)(2)(A)(vi), p. 76. The Committee Report explains that the term "structural" means "elements that are a permanent or fixed part of the building, such as walls, suspended ceilings, floors, or doorways." The Report further explains that "major structural alterations" refers to "structural alterations or additions that affect the primary functional areas of a building, e.g., the entrance, a passageway to an area in the building housing a primary function, or the areas of primary functions themselves. For example, structural alteration to a utility room in an office building would not be considered major." Committee Report, p. 67.

8. NFIB statement: No incentives are included in the ADA to help a business owner with voluntary compliance. The current tax deduction of \$35,000/year for structural changes is inadequate.

Response: The issue of providing financial assistance to businesses who make changes for physical access is, and should be, separate from establishing in the law the basic civil rights for people with disabilities. Section 504 of the Rehabilitation Act did not provide extra financial assistance when it established its requirements. The \$35,000/year deduction currently in the tax code, which was sponsored by Senator Dole, is an excellent start for the separate issue of providing assistance to business owners, and the NFIB is encouraged to work with the sponsors of the ADA as we explore further alternatives.

9. NFIB statement: In new construction, "accommodation" must be made for all "potential places of employment." However, this term is "poorly defined" and may include places such as boiler rooms and stockrooms.

Response: The term "potential places of employment" is defined in the bill and further explained in the Committee Report. As a preliminary matter, there is no requirement of "accommodation" for potential places of employment. At the Administration's request, it was clarified in the bill that the term "potential places of employment" was relevant only for purposes of new construction. "Potential places of employment" are defined in the statute as places that are intended for nonresidential use (i.e., that are intended for commercial use) and whose operations affect commerce. The purpose of the provision is straightforward: there are many new buildings that, at the time of design and construction, do not yet have established tenants that would qualify as "public accommodations" under the ADA, but are simply designed for some commercial use. This provision makes clear that, for purposes of new construction, such places must be built accessible so that when

business tenants ultimately occupy the building, it will already be accessible. The Committee Report further explains that regulations concerning "potential places of employment" will "cover the same areas in a building as existing design standards. Thus, unusual spaces that are not duty stations, such as catwalks and fan rooms, would continue to lie outside the scope of design standards." Because every state currently has in place design standards for construction, there will be guidance in this area for compliance. (See ADA, sec. 301(2), and 303(a), p. 67 and p. 79; Committee Report, p. 69.)

10. NFIB statement: The ADA provides that reasonable accommodation must be made unless it creates an undue hardship. However, the definition of undue hardship is "so subjective that no business owner will ever know when the requirements of the bill are met."

Response: This statement flies directly in the face of 15 years of experience under Section 504 of the Rehabilitation Act of 1973 and ignores major modifications made in the compromise ADA. Based on requests from the business community, the ADA introduced this year deleted a new standard that had been used in last year's ADA and returned to the terminology and standard of Section 504. That standard requires that accommodations that cause an "undue hardship" need not be undertaken. This change was made so that businesses could draw on the 15 years of experience and caselaw under Section 504 so that they would know "when the requirements of the bill were met." In response to requests from the Administration and the business community, the term "undue hardship" was further defined in the bill to include a specific standard (actions requiring "significant difficulty or expense") and to explicitly include the three factors set forth in the Section 504 regulations (size of business, type of operation and cost of accommodation). The standard and practice under the ADA will thus be the same as that already clearly set forth and applied under Section 504 for the past 15 years.

Dear Colleague:

The National Federation of Independent Businesses (NFIB) recently circulated a memo describing a number of alleged problems with S. 933, the Americans with Disabilities Act of 1989 (ADA). Each of those concerns appears to be based on either an misreading or misinterpretation of the ADA. In order to facilitate your review of the actual provisions of the ADA, which the Senate will be considering shortly, we have prepared a memorandum explaining how the concerns raised by the NFIB are, in fact, met by the legislation. That memo is attached for your review.

If you have any further questions, please do not hesitate to contact our staff: . We look forward to passing, with your help, a historic piece of legislation for people with disabilities and for all of America.

Sincerely,

9/6/89

TO: PEOPLE INTERESTED IN THE AMERICANS WITH DISABILITIES ACT
FROM: SENATE LABOR COMMITTEE AND SUBCOMMITTEE STAFF
RE: RESPONSE TO THE NFIB MEMO ON THE ADA

The National Federation of Independent Businesses (NFIB) recently circulated a memo describing a number of alleged problems with S. 933, the Americans with Disabilities Act of 1989 (ADA). This memo explains how each of those concerns are, in fact, met by the legislation. Indeed, every single one of the alleged concerns seems to be based on either a misreading or a misinterpretation of the bill.

Most people with disabilities do not even need these actions; they just need the right of access.

(with an additional phase-in period of two years, during which employers with 25 or fewer employees will not be covered).

In addition, the bill does not address issues such as recurring expenses, cost of accommodation in relation to the value of the job or consequences on new or marginal businesses.