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BEFORE THE
SUBCOMMITTEE ON SELECT EDUCATION
COMMITTEE ON EDUCATION AND LABOR
UNITED STATES HOUSE OF REPRESENTATIVES
ON
[MAKING PUBLIC BUILDINGS ACCESSIBLE TO THE
HANDICAPPED: MORE CAN BE DONE]



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Mr. Chairman and members of the Subcommittee, we are pleased to respond to your invitation to discuss our report, "Making Public Buildings Accessible to the Handicapped: More Can Be Done." This is not the first time we have looked at the issue of accessibility to public buildings by the handicapped.

In July 1975 we reported that the basic legislation covering accessibility to buildings commonly referred to as the Architectural Barriers Act of 1968 was largely not being complied with. We also concluded that neither the Architectural and Transportation Barriers Compliance Board, established by the 1973 Rehabilitation Act as an independent entity to oversee implementation of the Barriers Act, nor Federal agencies had made much progress in making buildings accessible to handicapped persons. We, therefore, recommended changes to strengthen the Barriers Act legislation.

Since 1975 actions have been taken to strengthen both the Barriers and Rehabilitation Acts. Public Law 94-541, passed on October 18, 1976, strengthened the Barriers Act, directing agencies to take actions to make buildings accessible rather than leaving such actions to their discretion. The Rehabilitation Act, amended in 1978, gave the Board the additional responsibilities of establishing minimum guidelines and requirements for the accessibility

standards required under the Barriers Act; insuring that all waivers and modifications of standards are based upon findings of fact; and developing and providing appropriate technical assistance to overcome architectural, transportation, and communications barriers.

Our current work was to determine if the problems identified in our 1975 report were corrected. We found that, although some progress had been made in making public buildings accessible to the handicapped, a number of problems continue to hamper the Board and Federal agencies. These include:

- There is a lack of clear authority between the Barriers and Rehabilitation Acts concerning the roles of the Board and other Federal agencies that are required to implement these acts.
- The Board has also encountered funding problems during much of its existence.
- The Board conducted only limited official business during much of 1979 due to a lack of a quorum membership.
- Agencies do not have guidelines and requirements from the Board from which to develop accessibility standards as required by the Rehabilitation Act.
- Federal agencies have established compliance systems as required by the Barriers Act to insure standards are incorporated into building designs and construction, however, agencies are not applying these systems adequately to some building alterations and leases as well as some new construction costing less than \$300,000.
- Agencies' internal systems of surveying and investigating the required compliance could be greatly improved by better recordkeeping and reporting of those buildings subject to the act.

PROBLEMS WITH LACK OF CLEAR AUTHORITY

The Board has not functioned as an independent entity. A major reason is that the Barriers and Rehabilitation Acts assign overlapping and somewhat duplicative functions between the Board and other agencies--the Department of Health, Education, and Welfare (HEW) and the General Services Administration (GSA)--without clearly assigning the leadership and authority roles necessary to implement the acts. For example, the Barriers Act requires the standard setting agencies--the Department of Housing and Urban Development, the Department of Defense, GSA, and the Postal Service--to establish architectural accessibility standards in consultation with HEW and says nothing about the Board. (On May 4, 1980, this responsibility was transferred to the Department of Education with the restructuring of HEW.) At the same time, the Rehabilitation Act requires these standard-setting agencies to consult with the Board on architectural accessibility standards and to establish their standards according to minimum guidelines and requirements from the Board and says nothing about HEW.

Another example of the lack of clear authority involves agencies' waiving the use of accessibility standards and reporting these activities. The Barriers Act authorizes standard setting agencies to waive their accessibility standards on a case-by-case basis and requires that GSA obtain information from the agencies and report all waivers

to the Congress. The Rehabilitation Act requires the Compliance Board to insure that each waiver of standards is based on findings of fact and is consistent with the Barriers Act while reporting annually to the Congress on agency actions to remove barriers. In addition, GSA is required to report all Federal activities pertaining to standards issued, revised, amended or repealed, whereas the Board is required to establish the guidelines and requirements for such standards and report annually on agency actions in complying with standards.

As a result of these situations, confusion exists among the Board and these agencies regarding authority and leadership roles for assuring that buildings are accessible to the handicapped.

In our opinion, a clear line of authority for oversight and enforcement is needed if buildings are to be made accessible. By making the Board primarily responsible for these functions, the Board would be the central authority for overseeing compliance with the Barriers Act.

FUNDING AND RESOURCE PROBLEMS

Since its inception, the Board has had numerous problems in obtaining the resources to carry out its functions. In 1974 the Board relied on the agencies which have representatives on the Board for staff and funds through interagency transfers, but this was not effective. In 1975 the Board obtained its first two permanent staff positions through

HEW's Office of Human Development. This has also been ineffective and made it difficult for the Board to carry out its functions. Although the Rehabilitation Act authorizes the Board to appoint an executive director and other personnel to carry out its functions, the Board has been restricted in obtaining the necessary staff and resources. For example:

--The Board pointed out in its July 13, 1976, meeting that HEW disapproved a resolution passed by the Board to request supplemental funds for its National Advisory Committee.

--With the help of the House Committee on Appropriations, the Board increased the number of full-time positions from 11 to 20 in mid-1977. In early 1979, however, when the Administration imposed ceiling cuts on HEW, the number of positions was reduced to 18.

According to the Board Chairperson, so long as the Board's budget is an item in the HEW budget, HEW can reject Board members' recommendations. To overcome this problem the Chairperson requested that the Office of Management and Budget (OMB) make the Board's budget a separate item in the President's fiscal year 1978 budget. Other Board members supported this request but OMB did not approve it.

In a March 20, 1979, letter to OMB, the Chairperson again requested direct funding. However, the Board's funding for fiscal year 1980 is still a part of HEW's budget and is at the same \$1 million annual level it has been since fiscal year 1977, even though the Congress authorized \$3 million annually beginning in fiscal year 1978.

According to OMB officials the Administration has taken action to resolve some of the funding problems by requesting \$1 million in supplemental funds for fiscal year 1980. However, in March 1980 the amount requested was reduced to \$623,000. It still included funds for 12 additional positions increasing the number of Board staff positions to 32. However, the Congress has not yet approved the request.

The fiscal year 1981 budget shows that the Board is to be funded at a level of \$2.3 million. This funding level included funds for 32 positions to carry out Board functions in 1981, but the Board is still not recognized as an independent agency having a separate budget presentation. In commenting on our recent report the Board told us that they should be treated as an independent agency having a separate budget; it said this matter had been discussed with OMB and appeared to be resolving satisfactorily.

BOARD MEMBERSHIP PROBLEMS

The Board was hampered during much of 1979 because it did not have a quorum membership until December 4, 1979. Amendments to the Rehabilitation Act in 1978 increased the number of Board members to 21 and directed the President to appoint 11 members from the public.

The Administration objected to the 1978 amendment that made the majority of the Board public members. In a November 17, 1978, letter from the White House to the Chairman, Senate Committee on Labor and Human Resources, the Assistant to

the President for Congressional Liaison said the President had signed Public Law 95-602 (the 1978 amendments) in anticipation of modifying key features of the bill during the next Congress. One such modification was to eliminate the Board's majority public vote and provide equal Government and non-Government vote.

Although the Chairperson submitted a list of potential nominees to HEW on March 16, 1979, and a revised list with HEW input was submitted to the White House on June 18, 1979, the public members were not appointed until December 4, 1979.

In April 1979 the Department of Justice issued an opinion that a quorum was necessary to conduct official business and, without at least one public member, the Board did not constitute a quorum. The Board was thus delayed in taking official actions and in approving plans for carrying out its new functions the 1978 amendments provided. The absence of a quorum for example, kept it from making major policy decisions for new initiatives in such areas as field reviews, public conveyances, communications, and technical services during much of 1979.

COMPLIANCE BOARD MUST TAKE
LEADERSHIP ROLE IN ESTABLISHING STANDARDS

In our 1975 report, we emphasized the fact that the American National Standards Institute (ANSI) standards were not specific. These standards had been adopted by Federal agencies as criteria to be followed in achieving barrier-

free buildings. However, the standards, as written, were subject to considerable interpretation. As of 1975, agencies' attempts to revise the standards or develop design criteria for establishing accessibility standards were not successful. For example, a contract was awarded by the Board in 1976 for \$146,000 to develop design criteria, but the contractor was not successful in developing design criteria and the Board did not issue any criteria to agencies to help them develop specific standards.

With the passage of the 1978 Rehabilitation Act Amendments, the Congress directed the Board to develop guidelines and requirements for the agencies to use in developing their standards. Therefore, the Board entered into an agreement with the National Bureau of Standards to do this.

Our October 1, 1979, letter to the Board expressed concern about the National Bureau of Standards agreement meeting the intent to issue minimum guidelines to agencies in a timely manner. According to the Board, progress has been made recently in establishing guidelines and requirements and it had issued a notice of intent to propose rules in the Federal Register on February 22, 1980. In response, the Board received 31 questions and over 100 comments which its staff is considering. The Board's goal is to issue a notice of proposed rulemaking in July 1980 and to issue final minimum guidelines and requirements in December 1980.

We believe that, once the guidelines and requirements are issued, the Board must continue providing leadership by working with the agencies to make sure that its guidelines and requirements are followed and that the Barriers Act requirements are interpreted and applied consistently throughout the country.

MANAGEMENT ACTIONS HAVE BEEN TAKEN TO
HELP ELIMINATE HANDICAP BARRIERS,
BUT MORE NEEDS TO BE DONE

Agencies have established compliance systems as required by the Barriers Act and have implemented regulations to insure that accessibility standards are incorporated into building design and construction. However, some of these systems could be further improved to insure that accessibility standards are applied in all construction and lease activities. Weaknesses we have identified in agency compliance systems include (1) some building projects and leasing activities are not covered, and (2) some validation or inspection of building certificates is not being done. For example, DOD's system often is not applied to many smaller installation projects such as morale, welfare and recreation projects funded with nonappropriated funds. These buildings do not receive the same review as major construction projects. As another example, the Department of Labor requires certifications that contain buildings leased with Federal funds to administer employment programs under the State Employment Security System are barrier free. Although such

certifications are prepared and submitted to the Department, no monitoring is performed to insure the certifications are valid or the actions stated in the certifications are carried out.

Because these systems need improvement, buildings are still being leased and constructed that are not barrier free. We therefore believe the Board should be working more closely with the agencies to develop and refine individual compliance systems and thus provide greater assurance that barriers to the handicapped are removed.

LACK OF RECORDS AND INEFFECTIVE REPORTING
SYSTEMS HAMPER SURVEYS AND INVESTIGATIONS

The Barriers Act requires the four standard-setting agencies to establish systems of continuing surveys and investigations to insure compliance with the act. However, none of these agencies have established separate systems for identifying those buildings subject to the act or the actions that would be necessary to make buildings accessible. Without such information for all buildings it is difficult to determine how many and to what extent buildings are not accessible. According to three agencies, they are relying on existing inspections and audit groups, their compliance systems, and the Board's review activities to satisfy the legislative requirement. The Postal Service has not taken action to satisfy this requirement.

GSA has attempted to carry out their responsibilities in this area by issuing regulations. In September 1969 GSA issued regulations requiring Federal agencies to report semiannually all building activity with respect to making buildings accessible to the handicapped. The regulations require agencies to report buildings that were:

- Constructed or altered by the Government after September 2, 1969.
- Leased in whole or part by the Government after January 1, 1977.
- Financed in whole or part by the Government after August 12, 1978.

The regulations also required agencies to keep records documenting the extent building activities incorporated or waived the ANSI standards. These reports and records were to be used by GSA to make surveys and investigations to insure compliance with the Barriers Act. However, this reporting system has not been effectively implemented for several reasons:

- Only about one-third of the 25 agencies GSA believes should be reporting their building activities are reporting.
- Many of the agencies reporting are not using GSA-required forms, and this makes it difficult for the limited numbers of staff assigned to the project by GSA to use reported data.
- GSA does not have authority to enforce compliance under the Barriers Act.

GSA regulations state "each administering agency" shall prepare and submit reports but do not define an "administering

agency." GSA officials interpret an "administering agency" to include all Federal agencies that administer contracts, grants, or loans for the design, construction, alteration, or lease of a building. DOD and Postal Service officials believe, however, that they are not required to report to GSA since they have been delegated authority for establishing their own standards and for performing their own surveys and investigation. Officials from the other agencies told us that they were not familiar with the reporting requirement.

Conclusions

In summary, the 1968 Barriers Act and the 1973 Rehabilitation Act assign overlapping functions to the Board and to other agencies and do not clearly assign leadership and authority roles. Acceptable accessibility standards still do not exist even though the Barriers Act has been in effect over 12 years. In addition, the Board has been hampered by a lack of independence. Agencies need to improve their compliance systems to make sure buildings constructed or leased with Federal funds are accessible to the handicapped, and agency efforts to establish continuing survey and investigations systems could be greatly improved if building activity recordkeeping systems were developed or improved.

Recommendations

We therefore recommended that the Congress amend the Barriers Act to:

- Establish the Board as the principal authority for providing leadership and insuring compliance.
- Require HUD, DOD, GSA, and the Postal Service to consult with the Board and obtain concurrence that agencies standards conform to its guidelines and requirements.
- Require the Board, rather than GSA, to report annually to the Congress on all waivers of standards.
- Require the Board, rather than GSA, to report on all Federal activities pertaining to standards issued, revised, amended, or repealed under the Barriers Act.

The Director, OMB, should recognize the Board as an independent agency with a separate budget presentation, similar to other Federal independent agencies.

To insure that there is consistent application of the Barriers Act throughout the country we recommended that the Board:

- Issue the minimum guidelines and requirements and direct that they are incorporated in all agency standards and that Barriers Act requirements are properly and consistently interpreted.
- Work with the Postal Service to resolve the present difference in dealing with lease actions and assure that buildings are made barrier free.
- Work with Federal agencies to refine or develop their compliance systems and provide the necessary information to carry out investigative functions to insure that all building activities will be accessible to the handicapped.

We have also made specific recommendations to the Secretaries of Defense, Labor, the Interior, and HUD; the

Postmaster General; and the Administrator of General Services to improve agency systems for assuring compliance with the Barriers Act.

Thank you, Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions.