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KEY DISABILITY RIGHTS REGULATIONS WILL REMAIN AUTHORITATIVE
IN THE WAKE OF *LOPER BRIGHT*:
A TOOLKIT FOR LITIGATION.

Amy Robertson

ABSTRACT

This essay will explain why the Supreme Court’s recent decision in Loper Bright Enterprises v. Raimondo¹—overruling the deference afforded regulatory interpretation in the Court’s well-established decision in Chevron U.S.A. v. Natural Resources Defense Council²—should not threaten a core of longstanding disability rights regulations. My goal is to provide a useful resource for litigators facing arguments challenging those regulations in the wake of Loper Bright.

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¹. Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).

². Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984).

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I. INTRODUCTION

Broadly speaking, the Court’s 1984 Chevron decision required that courts defer to federal agency interpretations of ambiguous statutory language.³ Loper Bright reversed this decision to hold that “[c]ourts must exercise their independent judgment in deciding whether an agency has

³. Id. at 842.

acted within its statutory authority.”⁴ This decision has generated concern among disability rights advocates because agency regulations are crucial to the understanding and enforcement of federal disability rights statutes.

Without minimizing the effect that Loper Bright may have on many aspects of the administrative state⁵—and the devastating effect it has already had on regulations designed to protect transgender individuals⁶—this essay will demonstrate that regulations prohibiting disability discrimination by, and ensuring equal access to, the programs and facilities of federally-funded entities, state and local government entities, and places of public accommodation will remain authoritative and enforceable.

Disability rights in the United States are grounded in a series of federal statutes that started with the Architectural Barriers Act in 1968⁷ and continued through Section 504 of the Rehabilitation Act (“Section

⁴. 603 U.S. at 412.

⁵. See Cary Coglianese & Daniel E. Walters, The Great Unsettling: Administrative Governance After Loper Bright, 77 ADMIN. L. REV. 101 (forthcoming 2025), <https://doi.org/10.2139/ssrn.5046620>. The authors survey a wide range of possible effects the decision may have on the field of administrative law, cautioning against facile predictions of this “Rorschach test inside a crystal ball.” Id. at 105.

⁶. See infra Part V.

⁷. Pub. L. No. 90–480, 82 Stat. 718 (1968) (codified at 42 U.S.C. §§ 4151 et seq.).

504”) in 1973⁸ and the Americans with Disabilities Act (“ADA”) in 1990,⁹ as amended in the ADA Amendments Act of 2008 (“ADAAA”).¹⁰ The regulations—which I will refer to generally as “the Regulations” in this essay—that enforce Section 504 and Titles II¹¹ and III¹² of the ADA share an interrelated history and will be the focus of this essay. Loper Bright did three things that will help to ensure the continued viability of these Regulations. First, the case held that Congress could expressly delegate authority to an agency to promulgate regulations, which authority the Court would respect “consistent with constitutional limits.”¹³ Second, the decision held that it did not “call into question” the holdings in earlier cases that “relied on the Chevron framework” to hold that “specific agency actions are lawful.”¹⁴ And third, the opinion listed several grounds on which courts should at least respect, if not defer to, the status of and expertise underlying agency regulations.¹⁵

⁸. 29 U.S.C. § 794.

⁹. 42 U.S.C. §§ 12101 – 12213.

¹⁰. Pub. L. No. 110–325, 122 Stat. 3553 (2008). These are far from the only statutes establishing and protecting disability rights. See infra notes 18–20 and accompanying text.

¹¹. 42 U.S.C. §§ 12131–12165 (“Title II”).

¹². 42 U.S.C. §§ 12181–12189 (“Title III”).

¹³. 603 U.S. at 413.

¹⁴. Id. at 412.

¹⁵. Id. at 386 (contemporaneousness; consistency over time), 388 (thoroughness of consideration); 402 (agency expertise).

Part II of this essay explains how, through the statutory text of Section 504 and Titles II and III of the ADA, Congress has explicitly delegated to regulatory agencies the task of defining the conduct that constitutes prohibited discrimination. In addition, these statutes have been enacted and re-enacted either expressly incorporating or implicitly adopting specific versions of the Regulations, “fixing” their meaning “at the time of enactment.”¹⁶ Part III discusses the Supreme Court and circuit court cases that have, since the early 1980s, acknowledged the legal force of the Regulations and adopted the Regulations’ interpretations of their respective statutes, both in reliance on Chevron and on independent grounds. Part IV explains that the Regulations are due respect as they have been consistent over a long period of time, were given thorough consideration at each stage of the regulatory process, and were issued by multiple agencies with specific expertise. Part V discusses a handful of relevant post-Loper Bright cases.

The Regulations satisfy each of the three independent grounds that the Loper Bright Court established for deference to or respect for agency regulations: express delegation (not to mention incorporation by reference) by Congress; forty years of Supreme Court and circuit precedent; and reliability based on contemporaneous issuance, longstanding consistency, thoroughness, and expertise. For these reasons, the Regulations have and should continue to have the force of law. That said, the Loper Bright decision is very new and defendants in Title II, Title III, and Section 504 cases will likely attempt to harness it

¹⁶. See id. at 400.

to undermine these regulations.¹⁷ This essay provides a toolkit to rebut

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- ¹⁷ Prof. Karen Tani has properly warned that corporate repeat players will be the ones who will seize immediately on the openings that Loper Bright offers (and which the dissenting Justices were quick to point out): They will challenge agency interpretations that are longstanding but had not previously been challenged under Chevron, and they will challenge high-stakes interpretations that are presumptively safe (because of a previous deference ruling) but that could be undermined via the very types of arguments the majority marshalled against Chevron. They will try to do all of this in judicial fora where they are likely to find sympathetic judges (for example, ones with strong ties to the conservative legal movement and a record of receptivity to these anti-administrative arguments).

Karen M. Tani, Foreword: Curation, Narration, Erasure: Power and Possibility at the U.S. Supreme Court, 138 HARV. L. REV. 1, 71–72 (2024).

“[W]hether Loper Bright turns out to be a power grab or a new framework accommodating significant acceptance of agency interpretations probably depends more on the attitude of the judges than on the specific mechanics of the legal regime used in reviewing questions of law.”

Thomas W. Merrill, The Demise of Deference - and the Rise of Delegation to Interpret?, 138 HARV. L. REV. 227, 231 (2024); see also Coglianese and Walters, supra note 5 at 147 (describing Loper Bright’s “symbolic import” and thus its “great power to shape how the law is perceived, applied, and elaborated”).

these arguments.

A quick note on what this essay does and does not cover. As explained above, my focus is on the related regulations interpreting Titles II and III of the ADA and Section 504. There are, of course, many other important statutory protections for disability rights including Title I of the ADA prohibiting employment discrimination on the basis of disability,¹⁸ the Individuals with Disabilities Education Act requiring, among other things, a free appropriate public education for children with disabilities in public schools,¹⁹ and the Fair Housing Amendments Act, prohibiting disability discrimination in housing.²⁰ The regulations enforcing these statutes will likely come under similar attack, and brilliant and heroic employment, special education, and fair housing lawyers will ably defend them. In addition, I come to this discussion as a disability rights lawyer, not an administrative law expert. This essay is best thought of as a starting point but by no means the final word in responding to a Loper Bright-based attack on the Regulations.

¹⁸. 42 U.S.C. § 12111–12117.

¹⁹. 20 U.S.C. § 1412(a)(1)(A).

²⁰. Pub. L. No. 100–430, 102 Stat. 1619 (1988), codified at 42 U.S.C. § 3601 et seq.

II. CONGRESS'S EXPRESS AND REPEATED DELEGATION TO ADMINISTRATIVE AGENCIES TO INTERPRET AND ENFORCE SECTION 504 AND TITLES II AND III OF THE ADA.

Congress repeatedly and expressly delegated authority to administrative agencies to issue the Regulations and ultimately incorporated Section 504 regulations by reference in the statutory text of the ADA.

A. Delegation.

The Loper Bright decision held that “when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it.”²¹ Congress has—in explicit statutory language—expressly delegated authority to a number of agencies to promulgate disability rights regulations.

²¹ 603 U.S. at 413; see also id. at 395 (“When the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits.”). Judge Stranch’s dissent in the post-Loper Bright case of *United States v. Bricker* provides a detailed exploration of the history of court deference to express delegation long predating both Loper Bright and Chevron. United States v. Bricker, No. 24-3286, --- F.4th ---, 2025 WL 1166016, at *17-26 (6th Cir. Apr. 22, 2025) (Stranch, J., dissenting).

One of the earliest examples of Congress's express delegation is the Architectural Barriers Act (ABA) passed in 1968,²² mandating the promulgation of "standards for the design, construction, and alteration" of buildings constructed, altered, leased by, or financed by the federal government to ensure access for people with disabilities.²³ The statute assigned responsibility for promulgation of standards to the General Services Administration (GSA) and to the Departments of Housing and Urban Development ("HUD") and Defense ("DoD"), all in consultation with the (then) Department of Health, Education, and Welfare ("HEW").²⁴ The GSA and HUD issued regulations effective September 2, 1969 and October 24, 1969, respectively, incorporating by reference rudimentary design standards issued in 1961 by the American National Standards Institute ("ANSI").²⁵

In 1973, Congress passed the Rehabilitation Act. Section 502 of that statute created the Architectural and Transportation Barriers Compliance Board ("Access Board") and delegated to it the task of ensuring compliance with the design standards that had earlier been issued by the GSA, HUD, and DoD pursuant to the ABA.²⁶ This will remain

²². Pub. L. No. 90-480, 82 Stat. 718 (1968) (codified at 42 U.S.C. §§ 4151 et seq.).

²³. 42 U.S.C. § 4152.

²⁴. Pub. L. No. 90-480, §§ 2-4.

²⁵. 34 Fed. Reg. 12828 (Aug. 7, 1969) (GSA); 34 Fed. Reg. 14733 (Sept. 24, 1969) (HUD).

²⁶. Pub. L. No. 93-112, § 502, 87 Stat. 355, 391 (1973) (codified at 29

important as the Access Board has been the starting point for a series of building-code-like standards designed to ensure physical access for disabled people.

Section 504 of the Rehabilitation Act of 1973 contained the landmark prohibition on disability discrimination by recipients of federal funding.²⁷ Although Section 504 did not contain an express delegation of rulemaking authority, the first regulations implementing Section 504 were promulgated by HEW on May 4, 1977 (the “1977 HEW Regulations”).²⁸ In 1978, pursuant to Executive Order 11914,²⁹ HEW issued regulations that were to “provide for consistent governmentwide enforcement of section 504” (“HEW Coordination Regulations”).³⁰ These Coordination Regulations—which largely tracked the original 1977 HEW Regulations—were essentially a template for other agencies issuing Section 504 regulations prohibiting disability discrimination by their funding recipients.³¹ As explained below, these 1978 Coordination Regulations would become a touchstone for later statutes and cases.

U.S.C. § 792).

²⁷. Id. § 504 (codified at 29 U.S.C. § 794(a)).

²⁸. 42 Fed. Reg. 22676 (May 4, 1977).

²⁹. 41 Fed. Reg. 17871 (Apr. 28, 1976).

³⁰. 43 Fed. Reg. 2132 (Jan. 13, 1978).

³¹. In 1981, responsibility for Coordination Regulations was transferred to the DOJ. 46 Fed. Reg. 40686 (Aug. 11, 1981). These regulations are currently codified at 28 C.F.R. pt. 41 (“DOJ Coordination Regulations”).

In 1978, Congress amended Section 504, expanding its coverage beyond recipients of federal funding to prohibit disability discrimination by federal agencies as well. The amended statutory language expressly instructed each agency to promulgate implementing regulations and to submit the regulations to the appropriate authorizing committees in Congress.³² Following the issuance of the HEW Coordination Regulations and the 1973 statutory amendment, more than 90 agencies and other executive administrative bodies have promulgated regulations implementing Section 504 as to both the agencies themselves (“agency regulations”) and as to recipients of their funding (“recipient regulations”). All of these regulations are based on and very similar to the HEW (now DOJ) Coordination Regulations. A working chart of these regulations is included as an appendix to this essay.

The 1978 amendments to the Rehabilitation Act also specifically delegated to the Access Board the authority to establish standards to implement the ABA.³³ Accordingly, in 1981, the Access Board issued its Minimum Guidelines and Requirements for Accessible Design (“MGRAD”), which greatly expanded on the ANSI standards originally adopted by the GSA and other agencies³⁴ to create a robust set of

³². Pub. L. No. 95–602 § 119, 92 Stat. 2955, 2982 (1978) (codified at 29 U.S.C. § 794(a)).

³³. Id. § 118(b)(1) (codified at 29 U.S.C. § 792(b)(1)).

³⁴. See supra note 25 and accompanying text.

architectural standards drafted to ensure that covered facilities were readily accessible to and useable by disabled people.³⁵

Finally, the Americans with Disabilities Act of 1990 expressly delegated authority to the Department of Justice (“DOJ”), the Department of Transportation (“DOT”), and the Access Board to promulgate implementing regulations.³⁶ On July 26, 1991, the DOJ issued regulations implementing Title II³⁷ and Title III,³⁸ and the Access Board promulgated new design standards.³⁹ The DOT issued its implementing regulations on September 6, 1991.⁴⁰

B. Reference and Incorporation in Statutory Language.

Where Congress references or incorporates regulatory language, it effectively adopts that interpretation.⁴¹ The Third Circuit applied

³⁵. 46 Fed. Reg. 4270 (Jan. 16, 1981), withdrawn and revised at 47 Fed. Reg. 33862 (Aug. 4, 1982) (codified at 36 C.F.R. pt 1190 (1982)).

³⁶. 42 U.S.C. §§ 12134, 12143, 12149, 12164, 12186, 12201.

³⁷. 56 Fed. Reg. 35694 (July 26, 1991) (codified at 28 C.F.R. pt. 35).

³⁸. 56 Fed. Reg. 35544 (July 26, 1991) (codified at 28 C.F.R. pt. 36).

³⁹. 56 Fed. Reg. 35408 (July 26, 1991) (codified at 36 C.F.R. pt. 1191).

⁴⁰. 56 Fed. Reg. 45584 (Sept. 6, 1991) (codified at 49 C.F.R. pts. 27, 37, 38).

⁴¹. See Lichter v. United States, 334 U.S. 742, 783 (1948) (where Congress “substantially incorporated into the statute the [relevant] administrative practice . . . [i]t thus became an express congressional definition” of that practice).

this principle in the context of the Title II regulations in Helen L. v. DiDario, holding:

Moreover, because Congress mandated that the ADA regulations be patterned after the section 504 coordination regulations, **the former regulations have the force of law**. When Congress re-enacts a statute and voices its approval of an administrative interpretation of that statute, that interpretation acquires the force of law and courts are bound by the regulation. . . . The same is true when Congress agrees with an administrative interpretation of a statute which Congress is re-enacting. . . . Although Title II of the ADA is not a re-enactment of section 504, it does extend section 504's anti-discrimination principles to public entities. Furthermore, the legislative history of the ADA shows that Congress agreed with the coordination regulations promulgated under section 504.⁴²

That “[m]oreover” is significant, as this passage follows a Chevron analysis, but suggests (properly) that explicit congressional approval is an independent ground on which to defer to the HEW Coordination Regulations.

⁴². Helen L. v. DiDario, 46 F.3d 325, 332 (3d Cir. 1995) (emphasis added; internal citations omitted); see also, e.g., Hikvision USA, Inc. v. FCC, 97 F.4th 938, 946, 947 n.5 (D.C. Cir. 2024) (holding that Congress “affirmatively ratified” a list of banned equipment previously identified by the FCC when it referred to the relevant regulation in statutory language).

In passing the ADA, Congress not only expressly delegated authority to the DOJ, the DOT, and the Access Board to issue implementing regulations, it took the further step of instructing those agencies to issue regulations consistent with existing regulations, effectively endorsing and incorporating those existing regulations into the ADA and given them the force of law.

For example, Title II of the ADA instructed the DOJ to issue implementing regulations⁴³ and further instructed that they be consistent with the 1978 HEW Coordination Regulations and the (presumably then-applicable 1990) DOJ agency regulations:

Except for “program accessibility, existing facilities”, and “communications”, regulations under subsection [12134](a) shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of Title 29. With respect to “program accessibility, existing facilities”, and “communications”, such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of Title 29.⁴⁴

⁴³. 42 U.S.C. § 12134(a).

⁴⁴. Id. § 12134(b).

Title III of the ADA also directed the DOJ to issue implementing regulations⁴⁵ and required that design standards included within the regulations were to be “consistent with the minimum guidelines and requirements issued by the [Access Board] in accordance with section 12204 of this title.”⁴⁶ The statute then instructed the Access Board to issue minimum design guidelines to supplement the existing standards in the MGRAD for purposes of Titles II and III.⁴⁷

Finally—and most significantly—the statutory text of the ADA directed that the statute as a whole was not to be construed to apply a lower standard than that of any of the Section 504 regulations:

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.⁴⁸

This is unambiguous statutory text stating that the ADA as a whole must be interpreted to require—at the very least—everything set forth in Section 504 and all of its implementing regulations promulgated by any federal agency.

⁴⁵. Id. § 12186(b).

⁴⁶. Id. § 12186(c).

⁴⁷. Id. § 12204(a).

⁴⁸. Id. § 12201(a).

While the Loper Bright decision shifts the primary task of statutory interpretation from agencies to courts,⁴⁹ courts are not free to “rewrite [the] statutory text.”⁵⁰ The statutory text of the ADA unambiguously incorporates HEW, DOJ, and other agencies’ Section 504 regulations, and the Access Board’s MGRAD. These regulations have the force of law.

C. Re-enactment and Ratification

Even when it does not expressly incorporate a regulatory interpretation into statutory language, Congress effectively adopts a such an interpretation when it re-enacts the statute without disavowing it.⁵¹

⁴⁹. 603 U.S. at 412 (internal citations omitted).

⁵⁰. Garland v. Cargill, 602 U.S. 406, 428 (2024).

⁵¹. See, e.g. Commodity Futures Trading Comm’n v. Schor, 478 U.S. 833, 846 (1986) (“It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the ‘congressional failure to revise or repeal the agency’s interpretation is persuasive evidence that the interpretation is the one intended by Congress.’”); Lorillard v. Pons, 434 U.S. 575, 580 (1978) (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change”); NLRB v. Bell Aerospace Co. Div. of Textron, Inc., 416 U.S. 267, 274–75 (1974) (“In addition to the importance of legislative history, a court may accord great weight to the longstanding interpretation placed on a statute by an agency charged with its administration. This is especially so where Congress has re-enacted the

While Congress is presumed to know the law when it legislates,⁵² this doctrine of legislative re-enactment is stronger where, as here, there is explicit evidence that Congress was aware of and adopted the regulatory interpretation in question.⁵³ Congress has re-enacted Section 504 on numerous occasions⁵⁴ and the ADA once⁵⁵ since their original passage, at no time calling into question the interpretation reflected in the then-applicable Regulations.

statute without pertinent change. In these circumstances, congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress. We have also recognized that subsequent legislation declaring the intent of an earlier statute is entitled to significant weight.”).

^{52.} Cannon v. Univ. of Chicago, 441 U.S. 677, 696–97 (1979).

^{53.} See United States v. Bd. of Comm'rs of Sheffield, 435 U.S. 110, 135 (1978) (holding that where “there ha[s] been a longstanding administrative interpretation of a statute when Congress re-enacted it, and . . . the legislative history of the re-enactment showed that Congress agreed with that interpretation” Congress is deemed to have ratified the interpretation).

^{54.} Pub. L. No. 95–602, § 120, 92 Stat. 2955, 2982 (1978); Pub. L. No. 99–506, § 1003, 100 Stat. 1807, 1845 (1986); Pub. L. No. 100–259, § 4, 102 Stat. 28, 29 (1988); Pub. L. No. 102–569, § 506, 106 Stat. 4344, 4428 (1992).

^{55.} The ADA Amendments Act of 2008, Pub. L. No. 110–325, 122 Stat. 3553 (2008).

Furthermore, during each of these re-enactments, Congress was aware of and often explicitly referenced the Regulations in legislative history. To start with, following promulgation of the initial Section 504 regulations in 1977, a House subcommittee conducted hearings on their implementation.⁵⁶ A year later, in a report discussing the re-enactment of Section 504, Congress specifically referred to the HEW Coordination Regulations and noted that, in light of these regulations, the “amendment codifie[d] existing practice as a specific statutory requirement.”⁵⁷ The report also explained that the new remedies provision was “designed to enhance the ability of handicapped individuals to assure compliance with . . . [Section 504] and the regulations promulgated thereunder.”⁵⁸

As noted above, the 1978 amendment to Section 504 required each agency to issue regulations implementing that statute as it applied to the activities of the agency itself and to submit them to Congress:

The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. **Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take**

⁵⁶. See generally Implementation of Section 504, Rehabilitation Act of 1973, Hearings Before the Subcomm. on Selection Educ. of the Comm. on Educ. and Lab., H.R., 95th Cong. (1977).

⁵⁷. S. Rep. No. 95–890 at 19 (1978).

⁵⁸. Id. at 18.

effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.⁵⁹

Pursuant to that requirement, congressional committees have had the opportunity to review many of the regulations implementing Section 504.

The authority of the Section 504 regulations was cemented in the legislative history of the ADA. There, Congress explained that the purpose of Title II was to “make applicable the prohibition against discrimination on the basis of disability, currently set out in regulations implementing section 504 of the Rehabilitation Act of 1973, to all programs, activities, and services” of state and local government.⁶⁰

Congress also explained why Title II contained less detail in its statutory language than Title I or Title III:

The Committee has chosen not to list all the types of actions that are included within the term “discrimination”, as was done in titles I and III, because this title essentially simply extends the anti-discrimination prohibition embodied in section 504 to all actions of state and local governments. The Committee intends, however, **that the forms of discrimination prohibited by section 202 [that is, Title II] be identical to those set out in the applicable provisions of titles I and III of this legislation.**⁶¹

⁵⁹. 29 U.S.C. 794(a) (emphasis added).

⁶⁰. H.R. Rep. No. 101–485 pt 2 at 84 (1990), as reprinted in 1990 U.S.C.C.A.N. 303, 366.

⁶¹. Id. (emphasis added).

This is crucial, as Title III spells out in statutory language most of the requirements that appear in Title II regulations.⁶² The effect of this ADA legislative history is to reinforce the statutory delegation, incorporation, and re-enactment that give the Regulations the force of law.

The express delegation in Section 504 and the ADA and the latter's explicit incorporation of earlier HEW, DOJ, and Access Board regulations demonstrates that the core Regulations have the force of law. This conclusion is underscored by the fact that Congress has repeatedly re-enacted these statutes with full knowledge of the Regulations and often explicit recognition of their authority.

III. PRECEDENTIAL CASES EXPRESSLY DEFERRING TO HEW, DOJ, AND OTHER REGULATIONS.

The Loper Bright Court held that the decision “[did] not call into question prior cases that relied on the Chevron framework.”⁶³ A recent Sixth Circuit case concluded that “prior cases” in this context included circuit precedent.⁶⁴ Forty years of Supreme Court and circuit precedent, all remaining good law, recognize the authority and reasonableness of the Regulations.

A number of Supreme Court and circuit court decisions have deferred to the HEW and DOJ Section 504 regulations, in some cases recognizing that they have the status of law. The earliest of these, Consolidated Rail

⁶². Compare, e.g., 42 U.S.C. § 12182(b) with 28 C.F.R. § 35.130(b).

⁶³. 603 U.S. at 412.

⁶⁴. Tennessee v. Becerra, No. 24–5220, —F.4th—, 2025 WL 751585, at *8 (6th Cir. Mar. 10, 2025).

Corporation v. Darrone, noted that, in passing the 1978 amendments to the Rehabilitation Act, “Congress incorporated the substance of [HEW’s] regulations into the statute.”⁶⁵ Three years later, in School Board of Nassau County v. Arline, the Court stated, “[a]s we have previously recognized, these [Department of Health and Human Services⁶⁶ Section 504] regulations were drafted with the oversight and approval of Congress . . . [and thus] provide ‘an important source of guidance on the meaning of § 504.’”⁶⁷ In the seminal case of Alexander v. Choate, the Court explained that “those charged with administering the [Rehabilitation Act] [have] substantial leeway to explore areas in which discrimination against the handicapped posed particularly significant problems and to devise regulations to prohibit such discrimination.”⁶⁸ None of these cases relied on Chevron in recognizing the authority of Section 504 Regulations.

Two more recent Supreme Court cases interpreting and applying Titles II and III of the ADA recognize the history and status of the regulations implementing those provisions. The Court in Bragdon v. Abbott addressed the question whether asymptomatic HIV fell under

⁶⁵. Consol. Rail Corp. v. Darrone, 465 U.S. 624, 634 n.15 (1984).

⁶⁶. In 1979, the Department of Health, Education and Welfare (HEW) was redesignated the Department of Health and Human Services (HHS). Pub. L. No. 96–88 § 509, 93 Stat. 668, 695 (1979).

⁶⁷. Sch. Bd. of Nassau Cnty. v. Arline, 480 U.S. 273, 279–80 (1987) (internal citations omitted).

⁶⁸. Alexander v. Choate, 469 U.S. 287, 304 n.24 (1985).

the ADA's definition of disability.⁶⁹ The Court relied on the instruction in 42 U.S.C. § 12201(a) that the ADA may not be construed to apply a lesser standard than Section 504 or any of its implementing regulations to hold that this "directive requires us to construe the ADA to grant at least as much protection as provided by the regulations implementing the Rehabilitation Act."⁷⁰

The Bragdon Court also relied on the "consistent course of agency interpretation before and after enactment of the ADA."⁷¹ The Court concluded: "[t]he uniform body of administrative and judicial precedent confirms the conclusion we reach today as the most faithful way to effect the congressional design."⁷² This latter analysis relied on Chevron, but should in theory be covered by Loper Bright's reassurance that the Court would not "call into question prior cases that relied on the Chevron framework."⁷³ It is also consistent with Loper Bright's affirmation that longstanding and consistent regulations are owed respect.⁷⁴

A year after Bragdon, the Court addressed the Title II regulations in Olmstead v. L.C. ex rel. Zimring, the case establishing that "[u]njustified isolation . . . is properly regarded as discrimination based on

^{69.} Bragdon v. Abbott, 524 U.S. 624 (1998).

^{70.} Id. at 631–32 (1998); see also id. (citing Darrone and holding that the HEW Coordination Regulations "are of particular significance").

^{71.} Id. at 642.

^{72.} Id. at 645.

^{73.} 603 U.S. at 412.

^{74.} Id. at 386; see also infra Part IV.

disability.”⁷⁵ The Court noted Congress’s instruction to the DOJ to issue regulations implementing Title II that were consistent with the HEW and DOJ Coordination Regulations.⁷⁶ While the Court noted that it was not determining the validity of the regulations—as neither party challenged them—it held, “[b]ecause the [DOJ] is the agency directed by Congress to issue regulations implementing Title II . . . , its views warrant respect.”⁷⁷ Crucially for the purposes of this essay, the Court went on to hold that it “need not inquire whether the degree of deference described in Chevron . . . is in order; ‘[i]t is enough to observe that the well-reasoned views of the agencies implementing a statute “constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.”’”⁷⁸

A number of circuit courts have also deferred to the DOJ’s ADA regulations based on their statutory and regulatory history including, for example, Helen L.—discussed above—which concluded that the Coordination Regulations had “the force of law.”⁷⁹

⁷⁵. Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 597 (1999).

⁷⁶. Id. at 591–92 (citing 28 C.F.R. § 41.51(d)).

⁷⁷. Id. at 597–98.

⁷⁸. Id. at 598 (internal citations omitted).

⁷⁹. Helen L., 46 F.3d at 332; see also, e.g., Shotz v. City of Plantation, 344 F.3d 1161, 1179 (11th Cir. 2003) (“Congress expressly authorized the Attorney General to make rules with the force of law interpreting and implementing the ADA provisions generally applicable to public services. See 42 U.S.C. § 12134(a). The DOJ issued its rules contemporaneously

IV. RESPECT DUE TO THE REGULATIONS BASED ON THEIR EXTENSIVE AND CONSISTENT HISTORY.

The Loper Bright Court held that regulations with a long and consistent history merit court respect, even if not full or automatic deference. The Title II, Title III, and Section 504 Regulations have the necessary characteristics of consistency, longevity, thorough consideration, and expert contributions, and are thus entitled to judicial respect.

with its implementation of these provisions, using conventional notice-and-comment rulemaking procedures. . . . The resulting rules are therefore entitled to controlling weight unless they are procedurally flawed, substantively arbitrary and capricious, or plainly contradict the statute. . . . As such, the relevant DOJ rule interpreting the ADA's anti-retaliation provision, 28 C.F.R. § 35.134, commands that same level of deference."); Marcus v. Kansas Dep't of Revenue, 170 F.3d 1305, 1306 n.1 (10th Cir. 1999) (same, quoting Helen L.); see also Messier v. Southbury Training Sch., 916 F. Supp. 133, 141 (D. Conn. 1996) ("Additionally, when Congress, in enacting a statute, explicitly approves of prior administrative interpretations of a law, Congress is treated as having adopted such interpretations. . . . Thus, Congress's instruction to the Attorney General to promulgate regulations under the ADA consistent with those promulgated under Section 504 indicates congressional approval of the above-cited specific prohibitions.").

A. Consistent Interpretation

While rejecting Chevron deference, the Loper Bright Court held that a regulatory interpretation warranted respect when it was “issued roughly contemporaneously with enactment of the statute and remained consistent over time.”⁸⁰ The Court underscored this point in a recent decision upholding the interpretation of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) that the Gun Control Act applied to weapon parts kits, often referred to as “ghost guns.” Quoting Loper Bright, the Court held that the plaintiffs’ novel reading of the statute—attempting to exclude such guns—ran contrary to the ATF’s consistent interpretation over “decades.”⁸¹ “[W]hile ‘courts must exercise independent judgment in determining the meaning of statutory provisions,’ the contemporary and consistent views of a coordinate branch of government can provide evidence of the law’s meaning.”⁸²

As demonstrated above, the programmatic and architectural access regulations that currently interpret and implement Section 504 and Titles II and III of the ADA were issued not long after passage of their respective statutes. In addition, the specific regulations that Congress

⁸⁰. 603 U.S. at 386; see also id. at 394 (“[I]nterpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute’s meaning.”).

⁸¹. Bondi v. VanDerStok, No. 23-852, 2025 WL 906503, at *11 (U.S. Mar. 26, 2025).

⁸². Id. (quoting Loper Bright, 603 U.S. at 394).

essentially incorporated into the text of the ADA—the 1978 HEW Coordination Regulations, the 1990 DOJ regulations, and the MGRAD—have consistently included —over decades—many of the principles that remain crucial to enforcing Section 504 and Titles II and III today; for example, these regulations:

- Prohibited covered entities from denying disabled people an opportunity to participate, providing unequal opportunity, providing benefits that are not as effective as that provided to others, or providing different or separate benefits;⁸³
- Prohibited the use of criteria or methods of administration that have a discriminatory effect;⁸⁴
- Prohibited discrimination “directly or through contractual, licensing, or other arrangements;”⁸⁵
- Required that programs and activities be administered in “the most integrated setting appropriate;”⁸⁶
- Required covered entities to provide auxiliary aids and services necessary to ensure effective communication, giving primary consideration to the request of the disabled person;⁸⁷

⁸³. 45 C.F.R. § 85.51(b)(1) (1978).

⁸⁴. Id. § 85.51(b)(3).

⁸⁵. Id.

⁸⁶. Id. § 85.51(d).

⁸⁷. 28 C.F.R. § 39.160(a) (1990).

- Required new construction and alterations to be readily accessible to and useable by disabled people and provided detailed accessibility standards;⁸⁸ and
- With respect to existing facilities, required covered entities to operate each program so that, when viewed in its entirety, it is readily accessible to and usable by disabled persons.⁸⁹

It is important to note that the right to reasonable modifications in policies, practices, and procedures where necessary to avoid discrimination—which appears in the Title II regulations⁹⁰—did not appear in the Section 504 regulations but rather was established by the Supreme Court itself in the 1985 case of Alexander v. Choate.⁹¹

The principles above have been consistent not only over time; they have been consistent across regulations issued by more than

⁸⁸. Id. § 39.151; MGRAD, 47 Fed. Reg. 33862 (Aug. 4, 1982) (originally codified at 36 C.F.R. pt. 1190 (1983)).

⁸⁹. 28 C.F.R. § 39.150(a) (1990).

⁹⁰. 28 C.F.R. § 35.130(b)(7)(i).

⁹¹. 469 U.S. at 301 (“[T]o assure meaningful access, reasonable accommodations in the grantee’s program or benefit may have to be made”). The terms “reasonable accommodations” and “reasonable modifications” have generally been held to be interchangeable in the context of Section 504 and Titles II and III of the ADA. See, e.g., Payan v. Los Angeles Comty. Coll. Dist., 11 F.4th 729, 738 n.4 (9th Cir. 2021).

90 agencies.⁹² Under Loper Bright, these regulations warrant judicial respect.

B. Thoroughness and Expertise

Relying on the earlier case of Skidmore v. Swift & Co.,⁹³ the Loper Bright Court held that agency interpretations that reflected, among other things, “specialized experience,” “thoroughness [of] consideration,” and “consistency with earlier and later pronouncements”⁹⁴ were entitled to respect. The previous section demonstrated the consistency—across decades and agencies—of the Section 504, Title II, and Title III Regulations. These Regulations also reflect the expertise of not only HEW and DOJ, but of the 90 agencies that each issued their own Section 504 regulations and the myriad experts and stakeholders who were consulted during the drafting process.

The original 1977 HEW Regulations were drafted following extensive consultation with congressional committees, federal agencies, disability rights organizations, service organizations, consumer groups, universities, school districts, and states.⁹⁵ They then underwent an

⁹². See Appendix.

⁹³. 323 U.S. 134 (1944).

⁹⁴. Loper Bright, 603 U.S. at 388.

⁹⁵. Hearings on Rehabilitation of the Handicapped Programs, 1976, before the Subcomm. on the Handicapped of the S. Comm. on Lab. and Pub. Welfare, 94th Cong. 1491, 1503–04 (1976) (“1976 Hearings”), available at <https://play.google.com/books/reader?id=p5vTn8oSxQwC&pg=GBS.PA1481>.

extended notice and comment period, during which HEW's Office of Civil Rights held 22 meetings and received over 700 comments.⁹⁶ The agency also conferred with experts in a wide range of relevant fields.⁹⁷

The MGRAD were originally promulgated by the Access Board, which is required to include representatives of 12 federal agencies as well as members of the public, a majority of whom must be people with disabilities.⁹⁸ Many of these individuals bring expertise from lived experience and careers in public policy, architecture, construction, and other relevant fields.

Furthermore, every time HEW, DOJ, DOT, or the Access Board issued new regulations, they underwent a robust notice and comment period, which included holding public hearings around the country and seeking input from both disabled people and the public and private entities governed by the regulations. For example, the DOJ regulations implementing Title II currently include five appendices describing the extensive process and comments that were involved in the original issuance and the subsequent amendment of those regulations.⁹⁹ When

⁹⁶. 42 Fed. Reg. 22676 (May 4, 1977).

⁹⁷. 1976 Hearings at 1505.

⁹⁸. 29 U.S.C. § 792(a)(1).

⁹⁹. 28 C.F.R. pt 35, app. A (guidance on revised regulations issued in 2010); app. B (guidance on the original 1991 regulations); app. C (guidance on regulations implementing statutory revisions to the definition of disability); app. D (guidance on regulations concerning accessibility of web information and services); app. E (guidance on accessibility of

the Access Board was developing design guidelines to implement the ADA, it held hearings in 14 locations around the country.¹⁰⁰ This thorough consideration, which drew on expertise from both inside and outside of the agencies, demonstrates that the Regulations are entitled to respect.

V. POST-LOPER BRIGHT DEVELOPMENT.

In the short time since the Loper Bright decision was handed down in June, 2024, one of its major uses has been to attack—largely successfully—Biden Administration regulations protecting transgender individuals under Title IX of the Education Act of 1972 (“Title IX”)¹⁰¹ and section 1557 of the Affordable Care Act.¹⁰² Nothing in this essay is

medical diagnostic equipment).

^{100.} 56 Fed. Reg. 3433, 3434 (Jan. 30, 1991).

^{101.} 20 U.S.C. § 1681(a) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”). See, e.g. Alabama v. U.S. Sec’y of Educ., No. 24–12444, 2024 WL 3981994, at *4 (11th Cir. Aug. 22, 2024); Texas v. Becerra, 739 F. Supp. 3d 522, 533–34 (E.D. Tex. 2024), modified upon request to clarify stay, 2024 WL 4490621 (E.D. Tex. Aug. 30, 2024); Oklahoma v. Cardona, 743 F. Supp. 3d 1314, 1324 (W.D. Okla. 2024); Arkansas v. U.S. Dep’t of Educ., 742 F. Supp. 3d 919, 941 (E.D. Mo. 2024); Kansas v. U.S. Dep’t of Educ., 739 F. Supp. 3d 902, 919–20 (D. Kan. 2024).

^{102.} 42 U.S.C. § 18116(a) (prohibiting discrimination on grounds prohibited by Title IX). See, e.g., Tennessee v. Becerra, 739 F. Supp. 3d

meant to downplay the extreme harm that these cases—brought largely by a group of conservative state attorneys general—are causing the transgender community. But while we mourn and fight these deeply misguided decisions, the analysis in this essay supports the proposition that the regulations implementing Section 504, Title II, and Title III do not (and should not) face similar risk.

Loper Bright has not yet played a major role in an ADA or Section 504 case, but has appeared in footnotes in four such cases.

Perhaps most importantly, the First Circuit recently recognized that the delegation of authority to the Equal Employment Opportunity Commission (“EEOC”) in section 6(a)(2) of the ADAAA “to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008,”¹⁰³ was a **“quintessential example of Congress ‘expressly delegat[ing] to an agency the authority to give meaning to a particular statutory term.’”**¹⁰⁴ This is significant because the delegation language of section 6(a)(2) of the ADAAA—directing the EEOC, the DOJ, and the DOT

467, 478 (S.D. Miss. 2024); Florida v. Dep’t of Health and Hum. Servs., 739 F. Supp. 3d 1091, 1096 (M.D. Fla. 2024).

¹⁰³. Pub. L. No. 110–325, Sec. 6(a)(2), 122 Stat. 3553, 3558 (2008) (codified at 42 U.S.C. § 12205a).

¹⁰⁴. Sutherland v. Peterson’s Oil Serv., Inc., 126 F.4th 728, 738 n.5 (1st Cir. 2025) (quoting Loper Bright, 603 U.S. at 394) (emphasis added).

to “issue regulations implementing”¹⁰⁵ the ADAAA—tracks delegation language elsewhere in the ADA and Section 504.¹⁰⁶

In two related cases, the Georgia Advocacy Office¹⁰⁷ and the Department of Justice¹⁰⁸ challenged Georgia’s policy of educating students with certain disabilities in segregated facilities. The state argued, among other things, that it did not have a sufficient role in “administering” these facilities to bring them under the Title II’s integration mandate, which requires covered entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”¹⁰⁹ After Loper Bright was decided, the state submitted supplemental briefing in both cases, essentially arguing that the word “administer” did not appear in Title II’s statutory language, only in the DOJ’s implementing regulations, and that it should thus be rejected by the court as regulatory overreach. Because

^{105.} 42 U.S.C. § 12205a.

^{106.} See, e.g., 42 U.S.C. § 12134(a) (the DOJ “shall promulgate regulations . . . that implement” Title II); id. § 12149(a) (the DOT “shall issue regulations . . . necessary for carrying out this subpart”); id. § 12186(b) (the DOJ “shall issue regulations . . . to carry out the provisions of” Title III).

^{107.} Georgia Advoc. Off. v. Georgia, No. 1:17-CV-3999-MLB (N.D. Ga. filed Oct. 11, 2017).

^{108.} United States v. Georgia, No. 1:16-cv-03088-ELR (N.D. Ga. filed Aug. 23, 2016).

^{109.} 28 C.F.R. § 35.130(d).

the court in each case ultimately concluded that the state did not “administer” the challenged program, both courts explained in footnotes that they need not address the Loper Bright question.¹¹⁰

While the courts in these Georgia cases rejected the state’s Loper Bright argument as irrelevant, that argument is a good illustration of how defendants who are ignorant of or intentionally ignoring the history discussed above will attempt to harness Loper Bright to attack the Regulations. The precise language of the integration mandate—including the word “administer”—was included in the 1978 HEW Coordination Regulations¹¹¹ and was thus incorporated by reference into the ADA.¹¹² It is not a recent regulatory development, but rather a longstanding, consistent interpretation of Section 504 that has been repeatedly reissued by multiple agencies, remaining unchanged through repeated re-enactments of that statute and ultimately incorporated by reference in the ADA’s statutory language.¹¹³

^{110.} Georgia Advoc. Off., 1:17-CV-3999-MLB, 2024 WL 4340034, at *20 n.21 (N.D. Ga. Sept. 27, 2024); Order at 35 n.16, United States v. Georgia, No. 1:16-cv-03088-ELR (N.D. Ga. Sept. 3, 2024) ECF No. 499 (redacted version of the original order, United States v. Georgia, No. 1:16-cv-03088-ELR (N.D. Ga. Aug. 16, 2024) ECF No. 486.

^{111.} 45 C.F.R. § 85.51(d) (1978) (“Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.”).

^{112.} 42 U.S.C. § 12134(b).

^{113.} Counsel for the Georgia Advocacy Office and the Department of

The only other ADA case referencing Loper Bright is Sookul v. Fresh Clean Threads, Inc.,¹¹⁴ in which the plaintiff challenged the accessibility to blind people of the defendant's website. There is disagreement among the circuits concerning whether and under what circumstances websites may be covered by Title III of the ADA, which prohibits disability discrimination in places of public accommodation.¹¹⁵ In siding with those cases holding that standalone websites were not places of public accommodation, the Sookul court observed, in a footnote, that one case to the contrary had relied on agency regulations and that "[t]hose interpretive methods have fallen out of favor since [that decision] was issued," but that Chevron deference would not have required a different result than was reached by that court.¹¹⁶ This oblique reference to Loper Bright was not dispositive, but is a good example of its "symbolic

Justice harnessed these and other arguments in briefs that are excellent examples of how to respond to attacks on Section 504 and Title II regulations. See generally Plaintiffs' [Proposed] Response to Defendants' "Notice of Supplemental Authority," Georgia Advoc. Off., 1:17-cv-3999-MLB (N.D. Ga. Aug. 2, 2024) ECF No. 291–1; Plaintiff's [Proposed] Response to Defendant's Notice of Supplemental Authority, United States v. Georgia, 1:16-cv-03088-ELR (N.D. Ga. July 19, 2024) ECF No. 493–1.

¹¹⁴. Sookul v. Fresh Clean Threads, Inc., 754 F. Supp. 3d 395, 410 n.6 (S.D.N.Y. Oct. 16, 2024).

¹¹⁵. See id. at *7 (citing cases).

¹¹⁶. Id. at *10 n.6.

import”¹¹⁷ or perhaps gravitational pull: given the extensive coverage of the case in the legal and popular press, courts considering the authority of agency regulations may feel compelled to reference Loper Bright even when it is irrelevant to the issues before them. Lawyers litigating disability rights cases should be prepared to meet these arguments in a wide range of relevant and irrelevant contexts.

VI. CONCLUSION

The 1978 HEW Coordination Regulations, the 1990 DOJ agency regulations, and the MGRAD were incorporated by reference into the statutory text of the ADA and should thus have the force of law. As such, these regulations should not be weakened by Loper Bright’s overruling of Chevron. As explained above, these regulations cover a great deal of the territory we need to enforce the ADA and Section 504. Later regulations—including the 1991 Title II and Title III regulations,¹¹⁸ the 2010 updates to these regulations,¹¹⁹ and more recent regulations such as those addressing web accessibility,¹²⁰ medical equipment,¹²¹ and public rights of way¹²²—were all promulgated (or are in the process of

¹¹⁷. Coglianese and Walters, supra note 5 at 35.

¹¹⁸. 56 Fed. Reg. 35694 (July 26, 1991); 56 Fed. Reg. 35544 (July 26, 1991).

¹¹⁹. 75 Fed. Reg. 56164 (Sept. 15, 2010) (Title II); 75 Fed. Reg. 56236 (Sept. 15, 2010) (Title III).

¹²⁰. 89 Fed. Reg. 31320 (Apr. 24, 2024) (DOJ final rule).

¹²¹. 89 Fed. Reg. 65180 (Aug. 9, 2024) (DOJ final rule).

¹²². 88 Fed. Reg. 53604 (Aug. 8, 2023) (Access Board final rule; not yet

being promulgated) pursuant to an express delegation of authority and all are interpretations of Section 504 and the ADA that are consistent with previous regulations that were incorporated by reference into the ADA. As such, the later regulations should maintain a legal status similar to earlier regulations.

Professors Coglianese and Walters compellingly analyze the complex potential effects of the Loper Bright decision using the tools of game theory.¹²³ Given the wide range of actors in this game—agencies, courts, litigants, Congress, etc.—their article is correct in concluding that it is impossible to predict the decision’s ultimate effect on “the administrative governance game” as a whole.¹²⁴ This essay considers a very small part of that larger, more complex game, one that is essentially a two-person, zero-sum game: litigation brought by individuals with disabilities (or organizations or agencies representing their interests) against public and private entities that discriminate against them and maintain physical and policy barriers to their full participation in society. Based on my thirty years of experience as a disability rights lawyer, it is predictable that covered entities will perceive an opportunity to attack disability rights regulations, including regulations interpreting Section 504 and Titles II and III of the ADA. But based on the specific history of those regulations discussed above, those challenges should fail.

adopted by the DOJ).

^{123.} Supra note 5 at 124–36.

^{124.} Id. at 136.

APPENDIX:
REGULATIONS ENFORCING SECTION 504
OF THE REHABILITATION ACT OF 1973

AGENCY	TYPE	CODE OF FEDERAL REGULATIONS	DATE ISSUED
Department of Health, Education, and Welfare ¹²⁵	Recipient	45 C.F.R. pt. 84	5/4/1977
Department of Health, Education, and Welfare	Coordination	45 C.F.R. pt. 85 ¹²⁶	1/13/1978
National Endowment for the Arts	Recipient	45 C.F.R. pt. 1151	4/17/1979
Corporation for National and Community Service	Recipient	45 C.F.R. pt. 1232	5/30/1979
Department of Transportation	Recipient	49 C.F.R. pt. 27	5/31/1979
Nuclear Regulatory Commission	Recipient	10 C.F.R. pt. 4	3/6/1980
Tennessee Valley Authority	Recipient	18 C.F.R. pt. 1307	4/4/1980
Department of Education	Recipient	34 C.F.R. pt. 104	5/9/1980
Department of Justice	Recipient	28 C.F.R. pt. 42	6/3/1980
Department of Energy	Recipient	10 C.F.R. pt. 1040	6/13/1980
Agency for International Development	Recipient	22 C.F.R. pt. 217	10/6/1980
Department of Labor	Recipient	29 C.F.R. pt. 32	10/7/1980
Department of State	Recipient	22 C.F.R. pt. 142	10/21/1980
National Endowment for the Humanities	Recipient	45 C.F.R. pt. 1170	11/12/1981
National Science Foundation	Recipient	45 C.F.R. pt. 605	3/1/1982
Department of Defense	Recipient	32 C.F.R. pt. 56	4/8/1982
Department of Commerce	Recipient	15 C.F.R. pt. 8b	4/23/1982
Department of Agriculture	Recipient	7 C.F.R. pt. 15b	6/11/1982
Department of the Interior	Recipient	43 C.F.R. pt. 17	7/7/1982
Environmental Protection Agency	Recipient	40 C.F.R. pt. 7	1/12/1984
Federal Election Commission	Agency	11 C.F.R. pt. 6	8/22/1984
Department of Justice	Agency	28 C.F.R. pt. 39	9/11/1984
United States Postal Service	Agency	39 C.F.R. pt. 255	4/10/1985
Selective Service System	Agency	32 C.F.R. pt. 1699	8/30/1985
American Battle Monuments Commission	Agency	36 C.F.R. pt. 406	2/5/1986
Consumer Product Safety Commission	Agency	16 C.F.R. pt. 1034	2/5/1986
Department of Energy	Agency	10 C.F.R. pt. 1041	2/5/1986
Export-Import Bank of the United States	Agency	12 C.F.R. pt. 410	2/5/1986
Institute of Museum and Library Sciences	Agency	45 C.F.R. pt. 1181	2/5/1986

¹²⁵. Revised in 2024. See *infra*.

¹²⁶. Transferred to the Department of Justice and codified at 28 C.F.R. pt. 41. 46 Fed. Reg. 40686 (Aug. 11, 1981).

AGENCY	TYPE	CODE OF FEDERAL REGULATIONS	DATE ISSUED
International Boundary and Water Commission	Agency	22 C.F.R. pt. 1103	2/5/1986
International Development Cooperation Agency / Agency for International Development	Agency	22 C.F.R. pt. 219	2/5/1986
International Trade Commission	Agency	19 C.F.R. pt. 201	2/5/1986
Marine Mammal Commission	Agency	50 C.F.R. pt. 550	2/5/1986
National Commission on Libraries and Information Science	Agency	45 C.F.R. pt. 1706	2/5/1986
National Endowment for the Humanities	Agency	45 C.F.R. pt. 1175	2/5/1986
National Transportation Safety Board	Agency	49 C.F.R. pt. 807	2/5/1986
Advisory Council on Historic Preservation	Agency	36 C.F.R. pt. 812	6/23/1986
Broadcasting Board of Governors	Agency	22 C.F.R. pt. 530	6/23/1986
Commission of Fine Arts	Agency	45 C.F.R. pt. 2104	6/23/1986
Committee for Purchase from People Who are Blind or Severely Disabled	Agency	41 C.F.R. pt. 51-10	6/23/1986
Commodity Futures Trading Commission	Agency	17 C.F.R. pt. 149	6/23/1986
Department of State	Agency	22 C.F.R. pt. 144	6/23/1986
Federal Maritime Commission	Agency	46 C.F.R. pt. 507	6/23/1986
Federal Mine Safety and Health Review Commission	Agency	29 C.F.R. pt. 2706	6/23/1986
Inter-American Foundation	Agency	22 C.F.R. pt. 1005	6/23/1986
Japan-United States Friendship Commission	Agency	22 C.F.R. pt. 1600	6/23/1986
National Capital Planning Commission	Agency	1 C.F.R. pt. 457	6/23/1986
National Commission for Employment Policy	Agency	1 C.F.R. pt. 500	6/23/1986
National Credit Union Administration	Agency	12 C.F.R. pt. 794	6/23/1986
National Endowment for the Arts	Agency	45 C.F.R. pt. 1153	6/23/1986
Navajo and Hopi Indian Relocation Commission	Agency	25 C.F.R. pt. 720	6/23/1986
Nuclear Regulatory Commission	Agency	10 C.F.R. pt. 4	6/23/1986
Occupational Safety and Health Review Commission	Agency	29 C.F.R. pt. 2205	6/23/1986
Pennsylvania Avenue Development Corporation	Agency	36 C.F.R. pt. 909	6/23/1986
Pension Benefit Guaranty Corporation	Agency	29 C.F.R. pt. 4907	6/23/1986
Surface Transportation Board	Agency	49 C.F.R. pt. 1014	6/23/1986
Tennessee Valley Authority	Agency	18 C.F.R. pt. 1313	6/23/1986
National Aeronautics and Space Administration	Recipient	14 C.F.R. pt. 1251	7/28/1986
Department of the Interior	Agency	43 C.F.R. pt. 17	3/4/1987
Department of Labor	Agency	29 C.F.R. pt. 33	4/9/1987
Architectural and Transportation Barriers Compliance Board	Agency	36 C.F.R. pt. 1154	5/5/1987
Environmental Protection Agency	Agency	40 C.F.R. pt. 12	8/14/1987
Federal Trade Commission	Agency	16 C.F.R. pt. 6	12/1/1987
Department of Commerce	Agency	15 C.F.R. pt. 8c	5/27/1988

AGENCY	TYPE	CODE OF FEDERAL REGULATIONS	DATE ISSUED
Small Business Administration	Agency	13 C.F.R. pt. 136	5/31/1988
Farm Credit Administration	Agency	12 C.F.R. pt. 606	6/1/1988
Department of Housing and Urban Development	Recipient	24 C.F.R. pt. 8	6/2/1988
African Development Foundation	Agency	22 C.F.R. pt. 1510	7/8/1988
Department of Health and Human Services	Agency	45 C.F.R. pt. 85	7/8/1988
Department of Veterans Affairs	Agency	38 C.F.R. pt. 15	7/8/1988
Executive Office of the President	Agency	3 C.F.R. pt. 102	7/8/1988
Federal Emergency Management Agency	Agency	44 C.F.R. pt. 16	7/8/1988
Federal Labor Relations Authority	Agency	5 C.F.R. pt. 2416	7/8/1988
Merit Systems Protection Board	Agency	5 C.F.R. pt. 1207	7/8/1988
National Aeronautics and Space Administration	Agency	14 C.F.R. pt. 1251	7/28/1988
National Archives and Records Administration	Agency	36 C.F.R. pt. 1208	7/8/1988
National Labor Relations Board	Agency	29 C.F.R. pt. 100	7/8/1988
Office of Personnel Management	Agency	5 C.F.R. pt. 723	7/8/1988
Office of Special Counsel	Agency	5 C.F.R. pt. 1850	7/8/1988
Overseas Private Investment Corp.	Agency	22 C.F.R. pt. 711	7/8/1988
Securities and Exchange Commission	Agency	17 C.F.R. pt. 200	7/8/1988
Railroad Retirement Board	Agency	20 C.F.R. pt. 365	10/27/1988
Harry S. Truman Scholarship Foundation	Agency	45 C.F.R. pt. 1803	1/31/1989
National Science Foundation	Agency	45 C.F.R. pt. 606	1/31/1989
Equal Employment Opportunity Commission	Agency	29 C.F.R. pt. 1615	5/26/1989
Department of Education	Agency	34 C.F.R. pt. 105	9/7/1990
Corporation for National and Community Service (AmeriCorps)	Agency	45 C.F.R. pt. 1214	11/15/1990
General Services Administration	Agency	41 C.F.R. pt. 105-8	3/8/1991
Department of Transportation	Agency	49 C.F.R. pt. 28	8/6/1991
Department of the Treasury	Agency	31 C.F.R. pt. 17	8/16/1991
Central Intelligence Agency	Agency	32 C.F.R. pt. 1906	9/1/1992
Department of Agriculture	Agency	7 C.F.R. pt. 15e	10/26/1993
Federal Retirement Thrift Investment Board	Agency	5 C.F.R. pt. 1636	10/26/1993
National Council on Disability	Agency	34 C.F.R. pt. 1200	10/26/1993
United States Arctic Research Commission	Agency	45 C.F.R. pt. 2301	10/26/1993
United States Institute of Peace	Agency	22 C.F.R. pt. 1701	10/26/1993
Department of Housing and Urban Development	Agency	24 C.F.R. pt. 9	6/16/1994
National Counterintelligence Center	Agency	32 C.F.R. pt. 1807	9/14/1999
U.S. Commission on Civil Rights	Agency	45 C.F.R. pt. 707	11/22/2002
Department of Homeland Security	Agency	6 C.F.R. pt. 15	3/6/2003
Federal Deposit Insurance Corporation	Agency	12 C.F.R. pt. 352	5/13/2004
Election Assistance Commission	Agency	11 C.F.R. pt. 9420	9/18/2008
Bureau of Consumer Financial Protection	Agency	12 C.F.R. pt. 1072	8/6/2012
Department of Health and Human Services	Recipient	45 C.F.R. pt. 84	5/9/2024

