

THE 2010 STANDARDS FOR ACCESSIBLE DESIGN

HARMONIZING ADA STANDARDS WITH STATE AND LOCAL BUILDING CODES

by Maja Obradovic

The Department of Justice published revised regulations for Title II and Title III of the Americans with Disabilities Act of 1990 (ADA) in the *Federal Register* on Sept. 15, 2010, which include the 2010 ADA standards for accessible design.¹ The new regulations include at Appendix A, the revised ADA accessibility guidelines for buildings and facilities (ADAAG).²

By way of background, Title III applies to public accommodations, commercial facilities, and private entities offering certain types of examinations and courses.³ Public accommodations are classified in 12 categories, and include restaurants, hotels, movie theaters, stadiums, lecture halls and other places of public gathering, grocery stores, gas stations, parks, zoos, schools, doctor's offices, and private schools.⁴ Title III also applies to commercial facilities such as factories and office buildings.⁵

The regulations were revised with two goals in mind: 1) to reinforce and augment the protection of the disabled by mandating accessibility in additional venues and by securing a more integrated setting for the disabled in the places that already require accessibility, and 2) to ensure easier compliance with the accessibility standards by coordinating them with state and local building codes. The revised regulations are effective as of March 15, 2011, and will amend the department's Title II regulations,⁶ and the Title III regulations.⁷

In order to obtain an expert view of

the scope and impact of the 2010 ADAAG amendments, we reached out to Kleo J. King, senior vice president of Accessibility Services, and Jennifer L. Perry, compliance specialist of Accessibility Services. Accessibility Services provides comprehensive consulting services to businesses regarding accessible design, including plan reviews, site assessments, and training regarding both federal and state accessibility requirements to ensure compliance with applicable codes. These are issues for which our clients will be seeking advice in the upcoming year, and both King and Perry were very helpful in navigating this complex area.

Q: What are the most significant changes introduced by the 2010 ADAAG?

A: The new regulations include a number of improved standards designed to provide a more comprehensive protection of the disabled in a more integrated setting. Some of the most far-reaching changes pertain to large places of public assembly, such as sports stadiums. For such venues, the number of seats/spaces required to be set aside for wheelchairs was actually reduced. However, the reduction was the result of a study that showed that the prior (1991) requirements left a number of set-aside spaces un-utilized, and will thus not adversely affect people with disabilities. On the other hand, the new ADAAG requires that the wheelchair-accessible seats be more integrated in the general seating area. Specifically, the 1991 requirements called for a wheelchair location and a companion seat, while 2010 regulations mandate three companion seats

for each wheelchair space. This will allow families to sit together.

In addition, there are new bathroom clearance requirements, and an increase in the accessible parking requirement now mandates that one in six rather than one in eight parking spaces be van accessible. Further, all new ATMs in places of public accommodations will have to be altered to allow visually impaired people to use speech output mode. Such ATMs now also have to be wheelchair accessible. Another example of a more comprehensive protection is the requirement that hotels adopt a reservation system that ensures that the wheelchair-accessible rooms remain open unless the hotel is fully booked and, if all rooms are sold out, that the wheelchair-accessible rooms are the last to be offered for sale.

Q: Are there any changes in terms of applicability of the ADAAG to particular places of public accommodations?

A: A major change in applicability of the ADAAG pertains to places of public recreation, such as playgrounds, miniature golf, fishing areas and pools. With respect to those types of areas, the 1991 regulations served merely as guidelines, while the newly promulgated 2010 regulations render the accessibility standards mandatory to such facilities.

Q: How do the 2010 revisions to the ADAAG benefit people with disabilities?

A: The changes represent significant progress toward providing a more family-friendly environment and a more

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integrated setting for the disabled. In our view, the implementation of the new regulations will, for the first time, mandate that places of special interest for families with children, such as parks and pools, be wheelchair accessible and otherwise comply with ADA requirements.

Q: What are the most significant challenges that people with disabilities continue to face when accessing public accommodations?

A: There is still a common misconception that the facilities built before 1991 are ‘grandfathered’ and thus not required to comply with the ADA standards. Such approach is plainly incorrect, as each facility with public access has an ongoing obligation to comply with the ADA accessibility guidelines. For example, there is a persistent problem with the failure of public accommodation entities to remove barriers, even though regulations require that barriers must be removed if such removal is readily achievable. While the financial condition of the particular public accommodation factors into what is readily achievable, it does not absolve the less well-to-do entities from all obligations to comply.

Q: What are the implications of the changes from the compliance standpoint?

A: The most significant implication of the 2010 changes is that they will resolve a longstanding inconsistency between the ADAAG and state and local building codes, by rendering the ADAAG more consistent with other regulations. For example, although the 2010 regulations appear more restrictive in some aspects, such as parking requirements, the reality is that places of public accommodations were already subject to those parking standards by virtue of local building codes.

By attaining greater clarity and consistency with building requirements, the new regulations will ensure easier compliance. Specifically, the new regulations will make it much easier on architects and designers to ensure compliance with all regulations, as the ADA is now better correlated to codes developed by well-recognized organizations such as the International Code Council, which publishes the International Building Code and the American National Standards Institute A117.1 Standard, referenced by many states throughout the country for accessibility compliance via the building code. In turn, the owners of public accommodations will be able to achieve full compliance, and thus a more accessible environment. The American Institute of

Architects supported and welcomed the passage of the 2010 ADAAG. Overall, the revised ADA accessibility guidelines will ensure easier compliance, and thus benefit both the places of public accommodations and the disabled.

To sum up the above expert view of the ADAAG, it is clear that the new requirements expand the reach of the ADA’s protection of the disabled. Also, it is clear that the 2010 standards render compliance with the ADA’s accessible design requirements somewhat more straightforward and better harmonized with the applicable building codes. Nonetheless, the complexity and number of the design requirements will continue to present a maze that is best navigated with caution and with guidance of experts in order to avoid costly litigation. ■

Endnotes

1. 28 C.F.R. §36.102 *et al.*
2. 28 C.F.R. §36 app. A.
3. 42 U.S.C. §12181 *et al.*
4. 42 U.S.C. §12181(7).
5. *Id.*
6. 28 C.F.R. §35.
7. 28 C.F.R. §36.

Maja Obradovic is an associate with Greenbaum, Rowe, Smith & Davis LLP in Woodbridge. She is a member of the firm’s employment law, and bankruptcy and reorganization groups.