



U.S. Department of Justice
Civil Rights Division

MEMORANDUM

March 29, 2011

TO: Federal Agency Civil Rights Directors and General Counsels

FROM: Thomas E. Perez
Assistant Attorney General

SUBJECT: Permitting Entities Covered by the Federally Assisted Provisions of Section 504 of the Rehabilitation Act to Use the 2010 ADA Standards for Accessible Design as an Alternative Accessibility Standard for New Construction and Alterations

We are writing to advise you that, until such time as you update your agency's regulation implementing the federally assisted provisions of Section 504 of the Rehabilitation Act of 1973 (Section 504), you may issue guidance to covered entities that permits them to use the 2010 ADA Standards for Accessible Design (2010 Standards) as an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). If you elect to do so, your guidance should state that your agency deems compliance with the 2010 Standards to be an acceptable means of complying with Section 504 accessibility requirements for new construction and alterations. Your guidance should also state that, once a covered entity selects an applicable accessibility standard for new construction or alterations under Section 504, that standard must be applied to the entire facility.

As you know, on September 15, 2010, the Department of Justice issued revised regulations for Titles II and III of the Americans with Disabilities Act (ADA), including revised accessibility standards known as the 2010 Standards. The 2010 Standards are based in large part on the ADA/ABA Accessibility Guidelines (Guidelines), which were adopted by the United States Access Board on July 23, 2004, but include additional requirements set out in the Department's Title II regulation at 28 C.F.R. § 35.151 (New Construction and Alterations) and the Department's Title III regulation at 28 C.F.R. Part 36, Subpart D (New Construction and Alterations). The additional requirements apply specific accessibility requirements depending on the nature of the covered entity.

Although they are not required to use the 2010 Standards for new construction and alterations until March 15, 2012, public entities covered by Title II of the ADA and private entities covered

by Title III of the ADA are permitted to use the 2010 Standards to comply with the accessibility requirements of the ADA. Once a covered entity selects a standard applicable under the ADA for new construction or alterations, that standard must be applied to the entire facility. When fully effective on March 15, 2012, the 2010 Standards will replace the 1991 ADA Standards for Accessible Design (commonly called ADAAG) and UFAS as accessibility standards for new construction, alterations, program accessibility, and barrier removal under the ADA.

Currently, the vast majority of Section 504 federally assisted program regulations deem UFAS to be the accessibility standard that complies with the new construction and alterations requirements of Section 504. However, several federal agencies have asked the Department, pursuant to its coordination authority for Section 504 under Executive Order 12250, if they have the authority to allow their recipients of federal financial assistance to use the 2010 Standards in lieu of UFAS. These agencies recognize that most of their recipients of federal financial assistance are also subject to the ADA and wish to minimize covered entities need to comply with multiple accessibility standards. In addition, many covered entities would prefer to use the 2010 Standards because they are written using language that is more consistent with the language used in many state building codes.

The Department will be working with federal agencies to revise their Section 504 regulations in the near future to adopt the 2010 Standards as the appropriate accessibility standard for their recipients. However, it is the Department's view that, until Section 504 regulations are revised, nothing in the current Section 504 regulations prevents federal agencies from deeming the 2010 Standards to be an acceptable alternative accessibility standard for new construction and alterations pursuant to Section 504. Please note that, prior to the issuance of revised Section 504 regulations formally adopting the 2010 Standards as the only accessibility standard deemed to meet Section 504 requirements, federal agencies may not require the use of the 2010 Standards as the only means of complying with Section 504.

If you or your staff has any questions, please feel free to contact the Disability Rights Section (DRS) of the Civil Rights Division at 202-307-0663 (voice/TDD). You may ask to speak to Zita Johnson-Betts, Acting Deputy Chief, or Barbara Elkin, Senior Attorney Advisor, in the Section. Information about the 2010 Standards for public and private entities is available on our ADA Web site at http://www.ada.gov/2010ADASTandards_index.htm

The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this

guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.