

In's and Out's of Conducting a Self-Evaluation for Local Government

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Basic requirements: title II

DOJ regulation, 1991 (provisions unchanged by 2010 revisions)

- Requires a self-evaluation of services, policies and practices,
 - with public input
 - by January 26, 1993. 28 CFR 35.105(a)
- Requires a transition plan, where physical changes are necessary to achieve program accessibility,
 - with public input,
 - (if 50 or more employees)
 - by July 26, 1992. 28 CFR 35.150(d)

Other procedural requirements

- ▶ Physical modifications to be complete by January 26, 1995. 28 CFR 35.150(c)
- ▶ Designation of responsible official (“ADA Coordinator”) (if 50 or more employees). 28 CFR 35.107(a)
- ▶ Grievance procedure (if 50 or more employees). 28 CFR 35.107(b)
- ▶ Notice to public. 28 CFR 35.106

Section 504



Agency regulations require a self-evaluation and (if necessary) a transition plan

Transition plan must include



- Description of physical obstacles affecting accessibility that must be removed
- Methods for making facilities accessible (in detail)
- Time frames (if more than one year, annual markers)
- Name of person responsible for implementation

Why do a plan now?



Ask yourself:

- Has anything changed in 20 years?
 - Times and people
 - Your programs
 - Your buildings and facilities
 - Web sites
- Are you ready for more change? (DOJ regulations, September 2010)
- Can you comply without a plan?

Is it better not to assess the problems?



Or is it better to acknowledge issues and fix them?

Benefits of planning

- Good faith
- Meet new deadlines under 2010 regulations
- Possibility of harsher mandates from litigation

DOJ's 2010 Revisions

- Final rule issued September 15, 2010
- Modifies some parts of 1991 regulation
- Adopts new accessibility standards ("2010 Standards"), including 2004 ADAAG
- Effective date: March 15, 2011
- Compliance date (facility provisions, hotel reservation policies)

New DOJ deadlines

- **March 15, 2012:** “compliance date” for using the 2010 Standards for new construction, alterations, program accessibility, and barrier removal.
- Although under certain circumstances, the revised regulations permit the use of the 2010 Standards before the compliance date of March 15, 2012, entities are not required to comply with the 2010 Standards until March 15, 2012.

Compliance date and standards for public entities

- **From September 15, 2010, to March 15, 2012,** when making architectural changes to provide program access, choose to follow the 1991 Standards, the UFAS, or the 2010 Standards.
- **On or after March 15, 2012,** must comply with the 2010 Standards in making architectural changes to achieve program accessibility and for all new construction and alterations.
- **On or after March 15, 2012,** must consider the supplemental requirements (such as swimming pools, play areas, and fishing piers) in the 2010 Standards to assess compliance with program accessibility.

DOJ's 2010 rule (title II)

Section 35.150

- Basic requirement stays: programs and facilities must be accessible in their entirety.
- Existence of barrier is “measured” by alterations standards.
- So, what if the measure changes?



New: Safe Harbor



Safe Harbor

DOJ 2010 rule, section 35.150(b)(2)(i):

Elements in existing facilities don't have to be altered for sake of program accessibility if

- ✓ Element isn't altered after March 15, 2012, and
- ✓ Element meets 1991 Standards/UFAS

What if there weren't any 1991 Standards for the element?



DOJ 2010 rule, section 35.150(b)(2)(ii):

Safe harbor doesn't apply to elements subject to supplemental standards, e.g.:

- Residential facilities dwelling units
- Boating, fishing, shooting, golf facilities
- Play areas

DOJ 2010 Rule and Program Access

- Does not adopt concept of “reasonable number”
- Describes factors for evaluating “in its entirety” in preamble
 - Size of entity
 - Program features at each site
 - Distance between sites
 - Travel times
 - Number of sites
 - Public transportation



Transition plan: approaches

- Follow each program or
- Assess the facilities and how they're used, then document where accessible programs can be offered
- Hybrid: assess both at once, then consider together

What kind of plan?

- Do what works for you
- Various options/models
- Identify it as your transition plan or barrier removal plan
- Look at how policies affect access
- Consider contractors, vendors, etc.

How do you develop a plan?

- **Involve everyone**
 - Those responsible
 - Those affected
- **Keep regulatory changes in mind**
- **Develop databases**
- **Establish priorities and limits**
- **Get public comment**
- **Put it on the web**

Then what?

1. **Empower someone**
2. **Strong grievance procedure**
3. **Up-to-date data bases**
4. **Train**
5. **Monitor**
6. **Respond to issues quickly**
7. **Document your responses**
8. **Check plans and construction**
9. **Publicize successes and best practices**
10. **Monitor**
11. **Retrain**

Resources

- DOJ's ADA website: www.ada.gov
 - Regulations
 - "One Book"
 - February guidance: 2010 Revised ADA Requirements: Effective Date and Compliance Date
- Tips for the Transition to 2010 (from ADA One, LLC)

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QUESTIONS?



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