



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

Comments of the Consortium for Citizens with Disabilities

submitted to the

**United States Department of Justice
Civil Rights Division**

regarding the

Notices of Proposed Rulemaking

CRT Docket No. 105

28 CFR Part 35

**Nondiscrimination on the Basis of Disability in State and Local Government Services
(73 FR 34465)**

and

CRT Docket No. 106

28 CFR Part 36

**Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial
Facilities
(73 FR 34508)**

August 18, 2008

We, the undersigned member organizations of the Consortium for Citizens with Disabilities (CCD) offer the following comments in response to the Department's Title II and Title III proposed regulations. CCD is the leading national coalition of consumer, advocacy, provider, and professional organizations advocating for people of all ages with physical, mental, sensory, and intellectual disabilities.

In general, we support the comprehensive and detailed comments developed by a variety of our colleagues who collaborated to produce the comments that will be submitted by DREDF and are at www.dredf.org. We believe this exhaustive set of comments responds thoroughly and effectively to the major overarching issues raised by the Department's rulemaking. Rather than simply recapitulating all of these comments here, we offer specific comment below on those matters that are of particular concern to us or when we wish to augment or supplement the dredf.org material. We do, however, restate for emphasis, the dredf.org content concerning the Department's proposed Safe Harbor provisions.

In addition, given that many issues raised in the Department's rulemaking cut across both Titles II and III, our comments integrate Title II- and Title III-related responses under each topic discussed below when both titles are involved.

Safe Harbors

Comment on 1% Safe Harbor for Qualifying Small Businesses

Summary

We oppose the proposal to create a safe harbor for small businesses that have spent 1% of gross revenues on barrier removal because:

- The proposed safe harbor is inconsistent with the intent of Congress and the language of the ADA requiring case-by-case analysis;
- A blanket formula is less fair and less effective than case-by-case analysis;
- SBA standards for "small business" are too expansive and unworkable as a civil rights standard
- The proposed safe harbor would allow one year of token spending to erase years of obligation accumulated through inaction;
- The proposed safe harbor would discourage planning to remove significant barriers and provide meaningful access.

If, despite these flaws, the Department elects to adopt these standards, significant safeguards must be added to prevent abuse.

Comment

The Department proposes a very significant change to the Title III "readily achievable barrier removal" requirement for existing facilities. We register the strongest possible opposition to this change, which would create a safe harbor that declares "a qualified small business has met its obligation to remove architectural barriers where readily achievable for a given year if, during that tax year, the entity has spent an amount equal to at least one percent (1%) of its gross revenue in the preceding year on measures undertaken in compliance with barrier removal requirements," for the following reasons.

The proposed safe harbor is inconsistent with the intent of Congress and the plain language of the Act . Section 301 (9) of the ADA defines "readily achievable" and establishes a set of factors to be considered in determining whether an action is readily achievable. Every one of the factors prescribed by Congress for consideration in determining whether an action is readily achievable focuses on the particular circumstances of the individual covered entity, or on the particular act in question. It is clear that Congress intended that the question of what is or is not readily achievable be settled through an individualized case-by-case assessment. As the legislative history makes clear, "What the 'readily achievable' standard will mean in any particular public accommodation will depend on the circumstances, considering the factors" in the definition. (H. Rep. 101-485, pt. 2 at 110, 1990 U.S.C.C.A.N. 303, 393). The proposed safe harbor would exempt a very large and extremely diverse class of businesses from performing such individual assessments and from providing the level of access for people with disabilities that was mandated by Congress by relieving that class of businesses of the obligation to remove barriers to access, when, in many cases, removing those barriers would have been readily achievable, as defined by Congress. The Department is taking it upon itself to eliminate the factors Congress set forth, and replace those factors with two of its own creation, for which there is no basis in the statute -- the SBA Size Eligibility Provisions and Standards, and the spending cap.

A blanket formula is inherently less fair and less effective than the current case-by-case determination for whether an action is readily achievable. Applying the factors set forth by Congress to a case-by-case analysis of what actions are readily achievable provides better, more consistent consideration of the particular needs of individual smaller, poorer or more stressed businesses, than the proposed safe harbor, while also ensuring that people with disabilities are afforded the level of access mandated by Congress.

The SBA standards for small business concerns are so expansive that adopting this proposal would be a de facto abandonment of the principle of case-by-case determination for whether an action is readily achievable. On its web site, the SBA uses a simplified definition of "small business" that excludes many of

the businesses that are included under the Size Eligibility Provisions and Standards, to claim that 99.7 percent of all firms in the United States that have employees are small businesses. The Size Eligibility Provisions and Standards serve to delineate the size and make up SBA's domain and constituency, so the Administration strives to ensure that they are as inclusive as it can make them. These standards embrace a wide range of businesses which no reasonable person would consider to be small, or in need of such a safe harbor, including businesses in many categories that have up to 1,500 employees. Convenience stores, supermarkets, department stores, and gas stations with convenience stores, can each have average annual receipts of \$25M and still be "small" businesses under these standards. Hospitals and specialty hospitals can have average annual receipts of \$31.5M, nursing care facilities \$12.5M and private residential facilities for people with developmental disabilities \$9M. Banks, savings and loans and credit unions with assets of up to \$165M each are "small" businesses under these standards. This proposal would create a safe harbor so vast that it would be likely to shelter nearly all places of public accommodation except for the handful of national chains in which the properties are owned and controlled by the central corporation.

The SBA definition of a small business concern is unworkable as a civil rights standard. In fact it is not a single standard. SBA's Size Eligibility Provisions and Standards are 1,200 different industry specific standards, some of which are based on annual receipts, some on the number of employees and yet others on assets, each of which is subject to change without reference to the others. These standards are not known in the business community, except among those businesses that have applied for an SBA program, and they not widely understood by any community. It is unconscionable to propose that people with disabilities be required to navigate through these labyrinthine provisions that set separate standards for, for example, men's clothing stores, women's clothing stores, and children's clothing stores, in order to determine what access rights they might have with a particular public accommodation.

The class of businesses included under the SBA Size Eligibility Provisions and Standards is huge and vastly diverse. It includes many businesses that have up to 1,500 employees, \$31.5M in average annual receipts, or \$165M in assets. Such a business should not be considered a small business for the purposes of the readily achievable barrier removal standard!

The relationship between a business' gross revenue and its available resources is equally variable. Some businesses depend on a very high volume of trade and may have profit margins dropping below 1%, while others, including those providing high end luxury goods or services, tend toward low volume, but with very high profits. Case-by-case consideration of the factors delineated by Congress ensures that those individual variations are accounted for in determining a business' level of obligation. The proposed safe harbor would bury all of that diversity under a single imposed formula that has not been shown to be appropriate for any of the businesses it would cover!

The inescapable result would be that the wealthiest of these businesses, the ones that could most easily afford to meet their obligations to provide access for people with disabilities, will have a substantial portion of those obligations waived by an arbitrary spending cap, while the poorest, most fragile businesses, those most in need of protection and individual consideration, will be further burdened by what, for them, will amount to an arbitrary spending floor.

The proposed safe harbor would allow one year of token spending to erase years of obligation accumulated through inaction. Readily achievable barrier removal is a continuing obligation. A public accommodation that has habitually failed to take those steps to remove barriers that were readily achievable for it has accumulated a growing disparity between the level access it provides and the level of access mandated by Congress. The proposed safe harbor would ignore a covered entity's history of action or inaction in removing barriers to access over the full course of its obligation, by maintaining that its obligation for the current year has been met if it spent an amount equal to 1% of its previous year's gross receipts on barrier removal. This would amount to a tremendous gift to those businesses which could have been removing barriers and improving access, but have chosen to ignore the law and do nothing. That gift would be at the expense of people with disabilities who will have been denied the level of access to those businesses that was mandated by Congress. And it would be a slap in the face to those business that have been responsible and conscientious in identifying and removing barriers to access as it became readily achievable to do so.

The proposed safe harbor would discourage planning to remove significant barriers and provide meaningful access. If a business' barrier removal obligations are met by spending 1% of its gross receipts in discrete, annual allotments, that business would never have an obligation to remove any significant barrier that cost more than its annual spending cap. A business that tried to save up for a larger project, or to spread the cost of that project over a few years, as it could under the current requirements, would lose its protection under the proposed safe harbor. As a result, businesses wanting to maintain this shelter would dole out their spending for barrier removal in annual 1% increments. Once the goal of the spending becomes reaching the annual cap in order to maintain coverage, any impact that spending has on improving access to the goods and services becomes a secondary issue. When the cost of removing a significant barrier does not fit the spending pattern established by the safe harbor, the business will leave that barrier alone and focus instead on a string of minor, possibly meaningless projects, simply to meet its spending lid. In effect, the proposed safe harbor would have these businesses paying what would amount to an annual protection fee.

Mitigating the harm of the proposed safe harbor

The Department must reject this safe harbor, which would largely eviscerate Title III's existing facility provisions, due to all the important reasons stated above.

If, in spite of these fatal flaws, the Department insists on adopting the proposed small business exemption, we strongly urge the following measures to bring the safe harbor closer to the intent of Congress and the language of the Act.

The Department could limit the scope of the safe harbor without conflicting with the Small Business Act, by not defining small business at all, and instead offering the safe harbor only to businesses that are eligible for the ADA Small Business Tax credit under Sec 44 of the IRS Code. It is crucial that the Department not use a definition of small business that brings with it the enormous complexity of the SBA standards and includes many businesses that no reasonable person would consider to be small, or in need of such a safe harbor, including businesses that have up to 1,500 employees and include department stores and banks.

The spending level that triggers the safe harbor should be cumulative, reflecting the continuing nature of the readily achievable barrier removal obligation. A business should not be able to erase years of obligation accumulated through inaction, or insufficient action by spending up to the safe harbor threshold for one year. Thus, a qualified small business should not be entitled to the safe harbor unless it has spent 1% of its gross revenues on barrier removal every year since the applicable effective date of the ADA.

A written barrier removal plan should be required for any business seeking to use the safe harbor . The plan should contain a prioritized list of significant access barriers, a schedule for their removal, and a description of the methods used to identify and prioritize those barriers, including documentation of any involvement by disability organizations or people with disabilities. Only spending consistent with the plan should count toward the safe harbor threshold. The Department has consistently supported such plans as evidence of a good faith effort. A safe harbor based on a barrier removal plan rather than a spending cap would be more consistent with the language of the Act.

A business seeking access to the safe harbor should be required to apply for any tax credits or deductions that might reasonably be available for the spending it intends to apply against the threshold, and the value of any such deduction or credit obtained should be subtracted from the countable spending.

A business' compliance with the requirements of the proposed safe harbor should serve only as rebuttable evidence that the business has met its readily achievable barrier removal obligations. This would allow the possibility that a person with a disability could show that what is readily achievable for a particular place of public accommodation is so substantially greater than the safe harbor that applying the safe harbor in that instance would be inconsistent with the Act. Further, if this safe harbor is adopted, the Department should make very clear that, in any litigation concerning barrier removal, the business has the burden of proving that it complied with this standard.

A business asserting that it has met the requirements of the safe harbor should be required to maintain and provide upon requests records of its gross receipts, amounts spent on barrier removal, tax deductions and credits sought and obtained, its barrier removal plan, and any other documents a person with a disability might need in order to evaluate that business' claim. People with disabilities should not have to file suit to learn whether a business is or is not in compliance. Financial and barrier removal information must be provided upon request.

Providing Just One of Any Type of Facility Does Not Constitute "Program Access"

The Department seeks comments regarding whether a 'reasonable number, but at least one' of a feature would be a workable standard to determine program access. (Question 24, p.24486; Question 30, p.34487.) This standard is neither workable nor reasonable. This proposed new standard would be discriminatory because it would result in unequal access for persons with disabilities, and it would also have the effect of segregating disabled and nondisabled persons.

Consider the following examples:

- A city could install one curb cut ramp per block, and then claim it had met the standard for accessible sidewalks.
- A school district could claim that, because it had made one elementary school in the district out of thirty accessible to people with disabilities, none of the other elementary schools would need to be brought up to accessibility standards.
- A state could bring one out of twenty courthouses up to accessibility standards and claim to have met the accessibility standard.
- A city could claim that it complied by making only one public park accessible out of the seven parks that serve different neighborhoods in that city.

In all four examples, the end result would be the same: the segregation of people with disabilities from the rest of the population. This would directly contravene the stated purpose of the ADA. Where a public entity provides multiple facilities (such as libraries, parks, pools, schools, courthouses, etc.) to serve different neighborhoods or geographic locations, it is necessary for people with disabilities to be able to access the benefits of such programs when they are provided on a local or neighborhood basis to the general population. Further, if persons with disabilities are only able to use one of seven public parks (for example), by definition persons with disabilities have been provided with access that is inherently unequal to that provided to nondisabled persons. Not only is their choice among parks effectively eliminated, but most likely, they must face the burden of leaving their neighborhood to travel to an accessible park, which is a burden that is not imposed on nondisabled persons. All these factors, and others, must be considered when establishing what is required to comply with the program access standard. For example, does the city have effective accessible transportation? If not, one park or playground in one corner of the city does not provide program access.

Service Animals

Proposed Changes to 28 C.F.R. §§ 35.104 and 36.104: The Department proposes amending current Title II and Title III regulations 28 C.F.R. §§ 35.104 and 36.104 to clarify that service animals are limited to "common domestic animals" and do not include wild animals or certain species of animals. The proposed amendments also clarify that service animals may include animals that assist people with "psychiatric, cognitive and mental disabilities," but do not include animals "whose sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or to promote emotional well-being."

Service Animals Used by People with Mental Disabilities: We strongly support the explicit recognition that service animals include animals that assist people with psychiatric, cognitive and other mental disabilities. Service animals perform a variety of critical functions that accommodate the needs of many individuals with psychiatric disabilities, including alleviating symptoms of post traumatic stress disorder, anxiety disorders and panic disorders by calming the handler and reducing physical and mental effects such as

anxiety, fear, flashbacks, hyper vigilance, hallucinations, intrusive imagery, nightmares, muscle tension, trembling, nausea, and memory loss. Service animals also assist people with cognitive disabilities with navigation, social cueing, and critical daily tasks. Such service animals make it possible for many people with psychiatric and cognitive disabilities to successfully participate in everyday activities.

Keeping the phrase “do work”: We also strongly support the Department’s decision to leave the words “do work” in the definition of service animal. We agree with the Department that the phrase “do work” is slightly broader than the phrase “perform tasks,” and captures a variety of important types of service animal assistance – primarily for people with mental disabilities. We urge the Department to include examples related to individuals with psychiatric or cognitive disabilities to make clear that the term “work” can include activities such as grounding a person with psychiatric or cognitive disability in time and place, interrupting self-mutilation, and alleviating symptoms of anxiety. The examples currently listed in the regulation do not include any examples of how service animals help people with psychiatric disabilities. Including such examples would help to dispel common misconceptions about the appropriate roles for service animals.

“Emotional Support” or “Comfort” Animals: We oppose the categorical exclusion of certain species and of animals that provide emotional support or therapy from the category of service animals covered under the ADA. The proposed exclusion is broad enough to encompass many animals that legitimately perform tasks or work to accommodate the needs of individuals with mental disabilities. For example, the proposed exclusion includes animals that provide “therapeutic benefits” to a person with a disability. There is no principled distinction between work that provides “therapeutic benefits” to a person with a psychiatric disability and work that otherwise accommodates the needs of a person with a psychiatric disability. The proposed exclusion simply invites covered entities to disallow the use of legitimate service animals.

We disagree with the Department’s statement that while protection for emotional support animals may be appropriate in settings such as the workplace and housing, the breadth of settings covered by Titles II and III mandates a blanket exclusion of such animals under these Titles. The appropriate way to address the breadth of settings covered under Titles II and III is through an individualized inquiry into the particular facts and circumstances rather than through imposing an across-the-board exclusion. Such blanket exclusions are inconsistent with the basic tenets of the ADA.

Exclusion of Species: In response to the Department’s Question 10 concerning whether certain species should be excluded from the definition of service animal, we do not believe it is appropriate to impose such a categorical exclusion. Indeed, some of the species that the Department proposes to exclude are routinely used to assist individuals with disabilities. For example, miniature horses are widely used as service animals, particularly by individuals with blindness or low vision. Monkeys are also used as service animals, particularly by people with spinal cord injuries. The ADA already provides for an individualized assessment to determine whether the use of a service animal would be reasonable in any particular set of circumstances, and allows the exclusion of animals that would pose a direct threat or would fundamentally alter a program, activity, good or service.

Exclusions based on Size or Weight: In response to the Department’s Question 11 concerning whether animals of a certain size or weight should be excluded from the definition of service animal, we do not believe it is appropriate to impose such a categorical exclusion. Again, the ADA provides for an individualized inquiry into the reasonableness of using a service animal in a particular set of circumstances. We believe that analysis already allows for consideration of whether an animal’s size or weight would make the animal’s use unreasonable in particular circumstances.

Training: We strongly support the Department’s decision not to require formal training or certification of service animals. Such a requirement would effectively exclude protection for many service animals for which no formalized training or certification programs exist. We urge the Department to make explicit in its regulations that the “individually trained” requirement may include training that occurs through experience with the animal’s handler. This clarification is necessary to correct widespread misconceptions that the “individually trained” requirement mandates that an animal be formally trained.

“Minimal Protection”: We support the Department’s decision to retain the phrase “minimal protection” in the definition of service animal. As the Department has noted, this language is important to ensure coverage of service animals that alert and provide protection to individuals at the onset of a seizure. It is also important for coverage of service animals that protect individuals with other disabilities – for example, by alerting individuals with diabetes at the onset of hypoglycemic episodes and protecting them from harm during periods of disorientation. Rather than removing the phrase “minimal protection,” the Department should simply clarify that this phrase does not include the use of attack dogs that pose a direct threat to other individuals.

Proposed Changes to 28 C.F.R. § 36.302 and Proposed Addition of 28 C.F.R. § 35.136: The Department proposes amending its Title III regulation to provide more specific information concerning modifications of policies to allow the use of service animals, and adding a new Title II regulation to address the same concerns.

The proposed amendments clarify that a public accommodation or public entity may ask a person with a disability to remove a service animal from the premises in certain situations, including where the handler is unable to control the animal, the animal is not housebroken, or the animal poses a direct threat that cannot be eliminated through reasonable modifications; that a person with a disability whose service animal is properly excluded must be given an opportunity to participate in programs and activities and obtain goods and services without having the animal on the premises; and that a public accommodation or public entity may not ask about the nature or extent of a service animal handler’s disability or require proof of animal certification or licensing but may ask whether the animal is required because of a disability and what work or tasks the animal is trained to perform.

The proposed amendments also clarify that a service animal handler must be permitted access to all areas where members of the public are permitted to go; that a handler may not be required to pay a fee or surcharge, post a deposit, or comply with requirements not generally applicable to other individuals; and that a handler may be charged for damage caused by his or her service animal if other individuals would normally be charged for causing damage.

We believe that the Department’s efforts to provide clarity concerning the obligations of public accommodations and public entities with respect to service animal handlers will generally benefit people with disabilities as well as covered entities. In particular, we support the Department’s statements barring inappropriate inquiries of individuals who use service animals. We hope that the proposed amendments will reduce instances of service animals being improperly excluded due to misunderstandings of the law.

Detention and Correctional Facilities

Proposed Addition of 28 C.F.R. § 35.152(a): The Department proposes adding a new § 35.152 to clarify the application of Title II to detention and correctional facilities. Among the proposed provisions, new § 35.152(a) states that state and local government agencies that “are responsible for the operation or management of detention and correctional facilities, either directly or through contracts or other arrangements,” must comply with the Title II regulation.

We are concerned the proposed amendment may be understood as too narrowly characterizing the obligations of state and local government agencies. The regulation applies to all state and local government agencies “responsible for the operation or management of ... detention and correctional facilities.” Every state has a department of corrections or similar state agency responsible by law for the creation and oversight of a network of correctional facilities. These departments are also charged under state law with ensuring that the facilities operate in accordance with federal and state law, including the Eighth Amendment to the U.S. Constitution and the ADA. A similar state law framework exists for detention facilities. State and/or local departments of corrections have legal responsibility for their creation and oversight. Such legal responsibility triggers Title II obligations. We think it would be useful to make explicit in the regulations themselves or the commentary that, in practice, the regulation applies to all public and privately operated facilities since they are all part of a government-administered system. Courts have recognized that a public entity’s obligation to comply with the integration mandate extends to privately operated facilities that are part of a publicly administered system. *See, e.g., Radaszewski v.*

Maram, 383 F.3d 599 (7th Cir. 2004); *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2003); *Fisher v. Oklahoma Health Care Auth.*, 335 F.3d 1175 (10th Cir. 2003).

Otherwise, we support the proposed amendment to the regulation. The Title II regulation currently states that public entities may not, through contractual or other arrangements, discriminate on the basis of disability. 28 C.F.R. § 35.130(b)(1), (3). The proposed § 35.152(a) clarifies that this rule applies to state and local correctional agencies. Such clarification is appropriate, given the large numbers of prisoners housed in facilities operated by private contractors: out of nearly 1.6 million inmates in state and federal prisons in December 2006, approximately 114,000 of these inmates were held in private prison facilities. U.S. Dep't of Justice, Bureau of Justice Statistics, *Prisoners in 2006* (Dec. 2007), at 1, 4. Such facilities house thousands of inmates with disabilities, who are entitled to the same protections from disability discrimination as are inmates at institutions operated directly by state or local correctional agencies.

Proposed Addition of 28 C.F.R. § 35.152(b)(2): The Department also proposes adding a new § 35.152(b)(2) to clarify that state and local governments must ensure that prisoners with disabilities “are housed in the most integrated setting appropriate to the needs of the individuals.” Under the new provision, “unless it is appropriate to make an exception for a specific individual,” among other things state and local governments “[s]hould not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would ordinarily be housed.”

We strongly support that aspect of the proposed amendment that clarifies that the Title II integration mandate applies to state and local corrections agencies and the facilities in which they house inmates under their jurisdiction. As the Department notes in its discussion accompanying the proposed new provision, in 1998 the Supreme Court unanimously held that Title II of the ADA applies to state prisons. *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206 (1998). The next year, the Court confirmed that discrimination under Title II includes unjustified segregation. *Olmstead v. L.C.*, 527 U.S. 581 (1999). *Yeskey* and *Olmstead* make clear that state and local correctional agencies are subject to the ADA's requirement to provide programs, services, or activities in the most integrated setting appropriate. Yet inmates with disabilities, including those with cognitive and psychiatric disabilities, continue to allege that they are excluded from participation in prison programs. See, e.g., *J.D. v. Nagin*, No. 07-9755, 2008 WL 2522127 (E.D. La. June 20, 2008) (class of juvenile detainees with mental health disabilities allege that they are denied access to special education services); Complaint, *Hecker v. California Dep't of Corr. & Rehab.*, No. 2:05-cv-02441-LKK-JFM (E.D. Cal.) (class of prisoners with psychiatric disabilities, some in segregated facilities, alleges that they are denied access to educational and vocational programs provided to other prisoners). We hope that clarification that the integration mandate applies in correctional settings will help change the approach of state and local governments to housing and services for inmates with disabilities.

We oppose that portion of the proposed regulation, however, that creates an express exception from the integration mandate where the correctional agency believes it “appropriate to make an exception for a specific individual.” This language would give agencies unfettered discretion to ignore their obligations under the integration mandate. Neither the *Olmstead* decision nor the existing regulation requiring state and local governments to provide services, programs, and activities to persons with disabilities in the most integrated setting appropriate, 28 C.F.R. § 35.130(d), contains such an open-ended limitation. Indeed, this open-ended defense would be inconsistent with the *Olmstead* decision. The *Olmstead* decision already affords public entities a “fundamental alteration” defense to “integration” claims under Title II. It would be inappropriate to codify an additional, open-ended defense for correctional agencies facing such claims.

No Proposed Change to 28 C.F.R. § 35.170: In the discussion accompanying the proposed amendments, the Department states that it has decided not to propose an exhaustion requirement exclusively for prisoners. The Advance Notice of Proposed Rulemaking proposed amending the regulation to require prisoners alleging Title II violations to file an administrative complaint with the Department prior to filing an ADA lawsuit, in order to satisfy the exhaustion requirement in the Prison Litigation Reform Act (PLRA).

We strongly support the decision not to amend the regulation to add an exhaustion requirement. At present, there is no requirement that any ADA litigant, including prisoners, exhaust administrative remedies before filing a complaint in federal court. Nothing in Title II supports treating prisoners differently

from other persons with disabilities in this regard. Nor does the PLRA require exhaustion with the Department: as the Supreme Court noted in recent cases, the PLRA requires prisoners to “complete the administrative review process in accordance with the applicable procedural rules.” *Jones v. Bock*, 549 U.S. 199, ___ (2007) (quoting *Woodford v. Ngo*, 548 U.S. 81, 88 (2006)). We know of no state or local correctional agency with procedural rules requiring prisoners to file administrative complaints with the Department in order to exhaust administrative remedies, and the Supreme Court has not imposed such a requirement. Nor would the filing of a complaint with the Department, in addition to filing a grievance with the correctional agency itself, appreciably further a primary reason for PLRA exhaustion, to give state and local corrections agencies the opportunity to “correct [their] own mistakes ... before [they are] haled into federal court.” *Jones*, 549 U.S. at 89 (quoting *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992)).

Such an exhaustion requirement, in addition to those imposed by state and local corrections agencies, would further impair the ability of many prisoners with psychiatric or cognitive disabilities to exhaust their complaints, given that many grievances arise during psychotic breaks or other periods of decompensation. See, e.g., *Whittington v. Sokol*, 491 F. Supp. 2d 1012, 1014 (D. Colo. 2007) (plaintiff was in psychotic state during time period for filing grievance); *Bakker v. Kuhnes*, No. C01-0426-PAZ, 2004 WL 1092287 (N.D. Iowa May 14, 2004) (plaintiff experienced seizures and dizziness throughout time for filing grievance). Prisoners with disabilities already face significant barriers to exhausting their administrative remedies and enforcing their rights in federal court; the Department should not impose additional barriers.

Compliance Reviews

Proposed Change to 28 C.F.R. § 35.172(b): The Department proposes amending § 35.172(b) to provide that agencies enforcing Title II may conduct compliance reviews of state and local government agencies when they have information “indicating a possible failure to comply with the nondiscrimination requirements” of Title II.

We support this proposed amendment. The new language gives the Department and other enforcing agencies authority under the Title II regulation similar to that the Department currently has under the Title III regulation. Since that regulation was promulgated in 1991, the Department has conducted compliance reviews (which are not necessarily prompted by a formal complaint) of public accommodations, including, among others, several private colleges and universities. These compliance reviews have resulted in settlement agreements which have improved accessibility at these facilities. We hope that the Department, and other agencies with Title II enforcement authority pursuant to 35 C.F.R. § 190, will use this compliance review authority to examine the programs, services, and activities of state and local governments – including public colleges and universities, state hospitals and mental health agencies, and state and local correctional facilities – for compliance with Title II, including its integration mandate.

Investigation of Complaints

Proposed Change to 28 C.F.R. § 35.171(a)(2)(i): The Department proposes amending § 35.171(a)(2)(i) to permit agencies receiving complaints for which they lack jurisdiction to refer such complaints either to the appropriate agency or to the Department of Justice. The current rule provides only for referral to the Department.

We support this proposed amendment as a more efficient means of directing Title II complaints to the appropriate enforcing agency. Under the current scheme, complaints filed with the wrong agency must be referred to the Department, which in most cases then refers them to the appropriate agency. The proposed amendment makes unnecessary the intermediate referral to the Department.

Proposed Changes to 28 C.F.R. §§ 35.171(a)(2)(ii), 35.190(e): The Department proposes amending these provisions to provide that, where a complaint is filed with the Department, but the Department does not have jurisdiction under section 504 to process the complaint or is not the agency designated in the Title II regulation to process the complaint, it may in its discretion retain the complaint for investigation. Currently, the Department must refer the complaint to the appropriate agency.

We support this proposed amendment as a more efficient means of processing Title II complaints. Referral by the Department to other enforcing agencies takes valuable time that would be better spent in investigation of the complaint. We encourage the Department to use its discretion to conduct timely investigations of such complaints.

Proposed Change to 28 C.F.R. § 35.172(a): The Department proposes amending § 35.172(a) to state that agencies enforcing Title II “shall investigate complaints.” The regulation currently provides that agencies “shall investigate each complete complaint.”

We oppose this proposed amendment. In its comment to the proposed amendment, the Department explains that, since the Title II regulation went into effect in 1991, it has “received many more complaints ... than its resources permit it to resolve.” According to the Department, it intends the revision to give enforcing agencies the discretion to investigate only those complaints that they believe implicate “the most critical matters.” We believe that it is inappropriate to change the regulation to codify the agencies’ current practices. For the vast majority of people with disabilities, private enforcement of their rights under the ADA is not a realistic possibility. These individuals should not suffer the consequences of inadequate federal enforcement resources, and the Title II regulation should not be rewritten to justify the continuing lack of attention paid to enforcement of Title II rights. Further, in many cases, the enforcing agency cannot know whether a complaint does or does not involve “critical” matters until it has made at least some effort to investigate the complaint. Moreover, complaints that clearly lack merit can be disposed of quickly.

Effective Communication--Auxiliary Aids and Services

The regulations concerning effective communication have never been articulated with the precision needed to ensure that information access is provided to people with disabilities on terms of genuine equality with people without disabilities. If the Department does not more fully elucidate the concept of effective communication, virtually any claim by an individual with a disability for specific communication-related accommodations amounts to a test case. This uncertainty must be remedied if the right to information access is to be assured.

Whether one considers, as examples, the persistent refusal of municipalities (even with timely notice) to provide information, such as meeting materials or utility bills, in alternate formats; or public entities’ persistent use of inaccessible websites to disseminate information vital to the public interest; or restaurants’ failure to provide menus in alternate formats; or the reluctance of many financial institutions and health care providers to offer accessible statements or meaningful access to confidential records; or retailers’ and travel companies’ maintenance of largely inaccessible web sites while charging additional fees to use in-person customer service assistance (if such assistance is available at all); or the failure of museums to offer description of their exhibits; or pharmacies’ failure to provide access to patient-specific drug labeling and other information on prescriptions they fill; people with disabilities are being denied the ADA’s promise of independence and equal participation.

Not only does the Department neglect to articulate the concept of effective communication more satisfactorily, the Department proposes to add insult to injury. We object strenuously to the proposed deletion of the language in 35.160(b)(2) which makes the preferences of the individual a matter of primary consideration when determining what auxiliary aids and services are to be provided by a Title II covered entity. The Department provides no rationale which justifies this serious curtailment of the rights of individuals with disabilities. Absent any meaningful discussion which would justify this abridgement of individual choice, we categorically oppose this unwarranted and unjustified recommendation. Indeed, we are seriously concerned that this proposed deletion was not mentioned at all, let alone thoroughly discussed, in the NPRM.

Accordingly, we urge the Department to amend sections 35.160 and 36.303 to account for the range of concerns described above. Specifically--

Amend 35.160 by renumbering subsection (b) as subsection (b)(1) and add thereafter the following--

(2) In determining what type of auxiliary aid or service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities. To be effective, such auxiliary aids and services must be furnished to individuals with disabilities at no additional cost and must result in the provision of services, programs, and activities offered by covered entities with the same timeliness of delivery, accuracy and thoroughness of communication, and opportunity for privacy and independence as is provided to others.

Amend 36.303(c)(1) as follows--

"(c)(1) Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. To be effective, such auxiliary aids and services must be furnished to individuals with disabilities at no additional cost and must result in the provision of the goods, services, facilities, privileges, advantages, or accommodations offered by such public accommodation with the same timeliness of delivery, accuracy and thoroughness of communication, and opportunity for privacy and independence as is provided to others."

Effective Communication--Companions

Proposed Change to 28 C.F.R. § 35.160(a): The Department proposes amending § 35.160(a) to expand the obligation of state and local governments to ensure effective communication, not just to applicants, participants, and members of the public, but also to their companions.

We support this proposed amendment. There are numerous situations in which the interests of persons with disabilities participating in state and local government programs, services, or activities require that their companions be provided effective communication. Public hospitals may need to communicate with the family members or friends of admittees with disabilities, particularly if such a companion is a designated health care decisionmaker for the individual with a disability. Public schools may need to communicate with the parent or guardian of a child with a disability regarding special education or other services. Parents or guardians, including foster parents, of children with disabilities may need particular auxiliary aids or services for effective communication with other child serving agencies. Families or friends visiting prisoners with mental illnesses may also need particular aids or services, as may companions who are assisting persons with mental illness with their applications for government benefits. In these situations and others, in order to serve the program participant with a disability in accordance with Title II, the state or local government agency must also effectively communicate with the participant's companion.

Proposed Change to 28 C.F.R. § 36.303(c)(1)(i): The Department proposes amending § 36.303(c)(1)(i) to expand the obligation of public accommodations to ensure effective communication, not just to applicants, participants, and members of the public, but also to their companions.

We support this proposed amendment. There are numerous situations in which the interests of persons with disabilities receiving goods or services from, or participating in the programs of, a public accommodation require that their companions be provided effective communication. Private hospitals may need to communicate with the family members or friends of admittees with disabilities, particularly if such a companion is a designated health care decisionmaker for the individual with a disability. Private schools may need to communicate with the parent or guardian of a child with a disability regarding special education or other services. Companions who are assisting persons with mental illness to obtain services from private social service providers may need particular auxiliary aids and services for effective communication. In these situations and others, in order to serve an individual with a disability in accordance with Title III, the public accommodation must also effectively communicate with that individual's companion.

Examinations and Courses

We agree with the proposed amendment to Section 36.309. The revision to this section makes clear that licensing, certification, and other testing authorities covered by Title III must not make overly burdensome requests for documentation when responding to an individual's request for reasonable modifications in the administration of an examination. The amendment protects the rights of people with disabilities by

assuring that they will not be subject to unreasonable and intrusive requests for information in a process that should be focused on providing effective modifications in a timely manner in order to achieve the core objective of Title III, which is to provide equal access for people with disabilities.

We also recommend that the department expand the final regulatory language to ensure that regulations accurately provide guidance and support the comments made about reducing the burden of documenting the diagnosis and existence of a disability.

Specifically we recommend the following language--

(iv) any request for documentation if such documentation is required is reasonable and limited to the need for the modification or aid requested. **Appropriate documentation may include a letter from a qualified professional or evidence of a prior diagnosis, accommodation, or classification, such as eligibility for a special education program letter from a qualified professional or evidence of a prior diagnosis, accommodation, or classification, such as eligibility for a special education program."**

Access to Internet-Only Goods and Services

The Department has consistently held that the nondiscrimination protections of the ADA extend to Internet sites operated by public accommodations and state and local government entities. Indeed, the Department has issued guidance to state and local government entities to assist them in making their Internet-related activities more accessible to people with disabilities.

Nevertheless, ambiguities persist. The recent case against Target demonstrates how courts are likely to apply the ADA in the on-line environment. Specifically, the Target case illustrates the problem with the ambiguity in current law that seems to allow those public accommodations that conduct business exclusively online to avoid their nondiscrimination obligations under the ADA.

If this ambiguity is not remedied, it seems highly unlikely that most courts will enforce the ADA against a public accommodation that operates exclusively online or that makes some goods and services available only online and not at any physical stores it may operate. With more and more goods and services being made available exclusively online, the failure of the Department's proposed rules to even mention the Internet at all, let alone address this ambiguity, is a profound missed opportunity and does not reflect the real world experience of people with or without disabilities.

Therefore, the Department should explicitly include reference to, and provide specific examples of, Internet-related delivery of the goods, services, programs and activities of ADA Title II and Title III covered entities throughout the regulations wherever possible. The Department should clarify that neither public accommodations nor public entities can freely discriminate against people with disabilities simply by moving their offerings exclusively online. Finally, just as the Department has already undertaken to provide guidance to state and local governmental entities, the Department should provide technical assistance to public accommodations in making their presence online more accessible. The Internet access standards promulgated pursuant to section 508 of the Rehabilitation Act are a good starting place for such technical assistance.

Equipment

The proposed Title II and Title III regulations fail to address the need for accessibility to equipment provided by state and local government entities and public accommodations. Indeed, the regulations implementing the ADA have never adequately accounted for the need for access to equipment by people with disabilities, and the Department is acknowledging as much in the narrative accompanying the proposed regulations. For example, according to the Department,

"When the title III regulation was initially proposed in 1991, it contained a provision concerning accessible equipment, which required that newly purchased furniture or equipment that was made available for use at a place of public accommodation be accessible, unless complying with this requirement would fundamentally alter the goods, services, facilities, privileges, advantages,

or accommodations offered, or would not be readily achievable. See 56 FR 7452, 7470-71 (Feb. 22, 1991). In the final title III regulation promulgated in 1991, the Department decided not to include this provision, explaining in the preamble to the regulation that 'its requirements are more properly addressed under other sections, and '... there are currently no appropriate accessibility standards addressing many types of furniture and equipment.' 56 FR 35544, 35572 (July 26, 1991).'' . . .The Department has decided to continue with this approach, and not to add any specific regulatory guidance addressing equipment at this time."

Unfortunately, the other regulatory provisions that the Department says should address free standing equipment accessibility are at best vaguely applicable. They do not specifically mention equipment accessibility or provide examples of some of the most commonly used items.

As a result, ADA coverage for most of the equipment to which people with disabilities, such as people with vision loss for example, need access is at best in doubt. There is no specific regulatory hook clearly requiring accessibility of, for example, exercise equipment using electronic interfaces, computers at Internet cafes or hotel business centers, reservations kiosks used by hotels in lieu of an in-person check in procedure, and devices provided by medical facilities with which a patient must interact reliably.

Sometimes making such equipment accessible can be as simple as labeling a few basic controls in braille or large print, and sometimes equipment accessibility demands the modification or purchase of additional software or hardware. Since the original ADA regulations were published over 16 years ago, technology has evolved well beyond what was ever commonly contemplated at that time. The combined effect of miniaturization, reduced power consumption, increased memory and functional capacity, and ever-lowering costs, means that making electronic and information technology (E&IT) and other equipment utilizing visual displays accessible is significantly more accomplishable today.

In spite of the fact that the Department is proposing not to address equipment accessibility, the Department is certainly aware of the issues. Remarkably, instead of spelling out additional regulatory requirements per se, the Department merely acknowledges in the narrative accompanying the proposed rules that,

"If a person with a disability does not have full and equal access to a covered entity's services because of the lack of accessible equipment, the entity must provide that equipment, unless doing so would be a fundamental alteration or would not be readily achievable."

We therefore urge the Department to specifically reference the accessibility of both fixed and free standing equipment in sections 36.302 and 36.304 entitled "Modifications in Policies, Practices, or Procedures" and "Removal of Barriers" respectively. The Department should reference specific examples of equipment (such as those outlined above) that best illustrate how its use is key to allowing people with disabilities to benefit from the goods and services offered by public accommodations such as private universities, hotels, medical facilities, gymnasias, business centers, retailers and others. Equipment accessibility is equally relevant in the context of Title II. Equipment such as automated teller machines, information kiosks and vending machines are frequently located in facilities operated by state and local government entities and hence, equipment accessibility should be addressed in the Title II regulations in a comparable manner to that which we propose for the Title III regulations.

Exam tables –

We have received numerous complaints over the years about doctors refusing to assist patients with disabilities to access examination tables. The majority of the complainants have been women. Many have indicated that they asked the doctor to obtain an examination table that would raise and lower so they could transfer onto the table and virtually all have refused. Several have shown their doctors the settlement agreement between the *United States of America and Valley Radiologists Medical Group, Inc.*, to no avail. Others have indicated that as they aged transferring onto the table has become impossible. One woman recently encountered an issue with a doctor she had been seeing for many years. As it became more difficult to transfer, she would bring an attendant to help. On her last visit she and her attendant asked the doctor if someone in his office could assist them. He said no and told her perhaps she should find a new doctor. Over the years she had asked him about obtaining an exam table that

would lower for easier transfer but he was never receptive to the idea. Having a requirement that an examination table be adjustable for easier transfer would assist patients with disabilities and their advocates.

Anticipated Costs or Benefits for Certain Requirements

The Department invites comment as to what the actual costs and benefits would be for eight existing elements, in particular as applied to alterations, in compliance with the proposed regulations (side reach, water closet clearances in single-user toilet rooms with in-swinging doors, stairs, elevators, location of accessible routes to stages, accessible attorney areas and witness stands, assistive listening systems, and accessible teeing grounds, putting greens, and weather shelters at golf courses), as well as additional practical benefits from these requirements, which are often difficult to adequately monetize.

Side reach – The adoption of the side reach requirements will prove beneficial as this change has been harmonized with the IBC and ANSI A117.1 standard, already in place in many jurisdictions nationwide. The streamlining of reach range requirements will improve the usability of controls and dispensers for people with disabilities, while also reflecting the changes that are already in place in many jurisdictions via the building code. When existing elements are altered or replaced, we feel that the side reach range requirements of 48 inches shall be incorporated into the alteration of that element. If existing elements are mounted at 54 inches and approached from a parallel position, they shall be permitted to remain at 54 inches until they are altered. Thus, we believe the benefits of this change outweigh the costs especially since many jurisdictions already have this provision in place and harmonizing such provisions streamlines the design process and eliminates mistakes that cost more money to rectify.

Water closet clearances in single-user toilet rooms with in-swinging doors – We are strong supporters of the increased clearances required at water closets (60 inches (1525 mm) minimum measured perpendicular from the side wall and 56 inches (1420 mm) minimum measured perpendicular from the rear wall) in alterations to existing toilet rooms. The required clearance at the water closet is an improvement for people with disabilities, as this change will allow for an easier transfer to the water closet for many wheelchair users. This change has also been harmonized with the ANSI A117.1 standard and will provide consistency for designers nationwide that are accustomed to using A117.1. The cost benefit to the design community is difficult to quantify, however, the streamlining of this requirement with state/local codes will definitely cut down on the possible misapplication (and subsequent required alterations) that currently occur when designers apply ADAAG clearances to water closets when ANSI requirements are more stringent, particularly in instances of alterations to toilet rooms when ADAAG permits the use of an alternate stall if space prohibits the installation of an accessible stall. As the Department is most likely aware, alternate stalls do not typically accommodate wheelchair users.

Stairs – It is feasible (and not cost prohibitive) to require that stairs that are altered between levels that are connected by an accessible route shall not be required to comply with Section 504, except that handrails compliant with section 505 shall be provided when the stairs are altered.

Elevators - The Revised ADA/ABA Accessibility Guidelines require that when an element in an existing elevator is altered, the same element must be altered in any other elevators programmed to respond to the same call button. The Access Board noted that this requirement “addresses [a] . . . unique circumstance. Elevator users typically do not control which elevator will respond to a call. If one car is altered and as a result made accessible, it would make continuous access on that elevator a game of chance, with the odds higher for each additional car responding to the call that is not similarly altered.” In essence, this requirement is necessary to ensure that the general alterations requirement is effective for people with disabilities. Not only is it a “game of chance” for a person with a disability to end up with a compliant elevator, in many cases, it may be impossible to accomplish, as inaccessible elevators come and go.

Location of accessible routes to stages – Allowing an individual with mobility impairments to access a stage in the same manner as the general public is imperative to integration. If the venue is being used for a graduation ceremony and the graduates access the stage from the seating area, graduates with disabilities must also be able to access from the seating area. To require a graduate or other participant to access the stage via a circuitous route is discriminatory. Of course if the access to the stage is only

from behind the stage then providing the accessible route there is acceptable. If the stage is accessed from the audience area and from behind then accessible routes need to be provided at both locations so the various users of the stage can access it the same way all similar users (i.e. performers and speakers) access the stage.

Accessible attorney areas and witness stands - The United States Access Board created the Courthouse Access Advisory Committee to evaluate access in the courts. The report (<http://www.access-board.gov/caac/report.htm>) outlines best practices for the witness stand as follows –

- The witness stand can be anywhere from floor level to one level down from the judge's bench. The actual height and location should provide direct visual observation of the witness from the judge's bench, jury box, attorney tables and other locations within the courtroom. For security, the judge and witness should not share the same path into and out of their respective stations.
- If the witness stand is raised above the well, the selection of a ramp or lift should be determined by available space and visual impact on court decorum. Ramps are preferable to lifts for a number of reasons (See Access to Raised Elements).
- If a ramp is selected, it must be permanently installed. The ramp should not interfere with or restrict movement throughout the courtroom. Ideally, one ramp should serve both the witness stand and the jury box.
- When a lift is used, it should be integrated into the witness stand so the lift function is only evident when the lift is in use. Access should not require assistance from anyone outside the courtroom or require special training to operate the lift. The lift should operate without the need for a key. Court staff should have access to lift controls to assist a person unable to operate the lift.

We believe that the recommendation in the Committee's report should be incorporated into the Department's final rule. The benefits of making these areas of the courtroom accessible include maintaining the decorum of the courtroom proceedings, maintaining a witness's or attorney's dignity and credibility as needing assistance may impact the jurors' opinions, and maintaining the safety of the witness or attorney with disabilities. The most compelling benefit is that of safety. In a highly volatile case (criminal or domestic), a witness who needs assistance to leave the witness box or who can not access the witness box and therefore is closer to his/her adversary (i.e. abusive spouse, assailant) may put them in danger or may intimidate them so their testimony changes or becomes less credible. A cost can not be placed on a person's constitutional rights or civil rights.

We have learned from judges with and without disabilities that access to the witness stand via level entry or ramp was preferred to lift as it did not disrupt the proceedings. Also, ensuring that the witness was able to testify from the witness box is crucial as a courtroom's line of sight from the judge's bench to the witness and the jury box to the witness is incorporated into the design and if the witness can not access a raised witness stand the judge or members of the jury may miss key visual indicators not to mention the security of the witness in criminal and family court matters where testifying may bring the person closer to a hostile party invoking fear and intimidation.

Areas in the court room serving the attorneys include the path to the counsel tables, entrance through the bar, the counsel tables, and a lectern if the attorney is required to speak from a lectern. The Committee's report addresses the height of counsel tables, adjustable lecterns, opening in the bar or if a gate is provided it must have compliant hardware and meet specifications for opening force (5 pounds of force maximum) and closing speed.

Assistive listening systems - We support the Revised ADA/ABA Accessibility Guidelines scoping and technical requirements in Section 706 for Assistive Listening Systems. The harmonization of Section 706 with ANSI A117.1 streamlines the technical requirements and should prove to be cost effective for those in the design/construct fields. In the assembly projects that we have worked on, people with hearing disabilities have requested and were provided with a separate Assistive Listening System at one (1) ticket window. We would suggest that this be incorporated in the final rule as we will be advocating for a similar requirement in the International Building Code (IBC).

Accessible teeing grounds, putting greens, and weather shelters at golf courses -

We support the requirements outlined in Section 1006 of the Revised ADA/ABA Accessibility Guidelines to begin to provide accessible teeing grounds, putting greens, and weather shelters at golf courses.

Miniature Golf Facilities

If the Department wishes to create an exception for miniature golf facilities we believe such a task is more appropriate for the Access Board than for the Department.

Accessible Holes on Miniature Golf Courses

We do not see any need to alter the miniature golf requirements in 2004 ADAAG.

In conclusion, we do not believe that the items discussed above need to be revisited by the Access Board. We urge the Department to adopt the Revised ADA/ABA Accessibility Guidelines as published in 2004.

State and Local Standards for Play and Recreation Area Accessibility

Based on experience with states that have their own requirements for accessible play and recreation areas (i.e., Massachusetts, New Jersey, North Carolina) we believe that the U.S. Access Board has developed the most comprehensive accessibility requirements for these unique areas and public entities and public accommodations should not be provided with safe harbor when play and recreation areas are altered.

Exemptions for Play Areas and Recreational Facilities

Owners and operators of public accommodations should not be exempt from specific compliance with the supplemental requirements for play areas and recreation facilities as these areas should be treated like any aspect of the public accommodation. Thus if barrier removal is readily achievable then barriers must be removed in existing facilities and as each year passes the facility becomes more accessible. By applying the barrier removal standards, a public entity would first create an accessible path of travel to the play area or recreation facility, it would then begin to remove barriers to create the accessible play or recreation experience until ultimately the area would be accessible and individuals with disabilities will be able to utilize the play or recreation area as would persons without disabilities. To do otherwise relegates individuals with disabilities to the sidelines of play and recreation areas and does not allow them to engage in recreational activities with their nondisabled peers.

Cost of Compliance with Supplemental Requirements for Existing Play Areas

We do not understand the need for this discussion as the current ADA statute and regulations address this in the readily achievable standard outlined in the existing Title III regulations and the undue burden standard in the existing Title II regulations. These standards should be applied to play areas so that a determination can be made and access for children with disabilities can be achieved so that they can play with their peers with and without disabilities. Our suspicion is that making individual play areas and the play equipment is not the issue but rather the issue is an accessible surface and the maintenance of the surface.

Exemption of Existing Play Areas Less Than 1,000 Square Feet

We do not believe that in the interest of access and true integration that there should be a blanket exception to play areas under 1,000 square feet as this would exempt a large number of play areas and again, the current ADA statute and regulations address this economic concern while balancing the "quality of life" benefits that are difficult to quantify in the readily achievable standard, 28 CFR §36.304, of the existing Title III regulations, and the undue burden standard, 28 CFR §35.150, of the existing Title II regulations.

DOJ's proposal would eliminate *any* access in existing play areas located in small neighborhood parks, fast serve restaurants, and even day care facilities. In some small towns, there may *only* be small play areas connected with these facilities. The exemption would be taking many steps backwards.

We question the RIA's numbers and assumptions. The play area requirements are already crafted to take the needs of covered entities into account, and are quite minimal requirements.

If the Department ***must*** impose a limitation, it must be modified to state that an *existing* play area less than 1,000 square feet may be exempt from the requirements, unless it is the program's only play area. In those circumstances, the play area must be required to provide an accessible route and access to one-half of the ground level play components.

The impact of this approach needs to be reconsidered. The Access Board's 2000 play area guidelines should be the benchmark for achieving program access and barrier removal, used over time. Anything else is likely to be too complex and misunderstood.

Height of Play Components in Play Areas

We oppose further exemptions or reduced scoping when altering existing play areas and recreation facilities. When the Access Board was engaged in this rulemaking, there was significant negotiation and balancing of costs. As noted above, play is essential to optimal child development. If children with disabilities cannot access play areas, then these children miss out on an essential tool for child development and an essential opportunity for integration and interaction with non-disabled peers.

Variety of Available Play Areas

Requiring only one play area of each type to comply in existing sites with multiple play areas will not provide true access and integration. The current ADA statute and regulations address this in the readily achievable standard, Section 28 CFR §36.304, of the existing Title III regulations, and the undue burden standard, 28 CFR §35.150, of the existing Title II regulations, and these standards should be applied to existing play areas. Thus, we oppose further exemptions or reduced scoping when altering existing play areas and recreation facilities. When the Access Board was engaged in this rulemaking, there was significant negotiation and balancing of costs. Play is essential to optimal child development. If children with disabilities cannot access play areas, then these children miss out on an essential tool for child development and an essential opportunity for integration and interaction with non-disabled peers.

Swimming Pools

We believe that larger pools should be required to provide two means of accessible egress as it is reasonable considering the cost of a pool lift is approximately \$5,000 and an accessible stair can be considered the second means of egress. We do not believe that an existing pool needs to undergo major renovation to provide a sloped entry; this would occur only in renovation and new construction. Lifts and accessible stairs are reasonable and should be provided in swimming pools more than 300 linear feet long.

All existing swimming pools should provide one means of accessible egress regardless of the size of the pool. A pool lift costs about \$5,000 which would be readily achievable for most entities. Allowing an existing pool to remain inaccessible is unconscionable as the life of most public pools is approximately 50 years.

Often different pools on the same site are for different purposes, such as adults only. All existing swimming pools should provide one means of accessible egress regardless of the size of the pool. A pool lift costs about \$5,000 which would be readily achievable for most entities. Allowing an existing pool to remain inaccessible is unconscionable as the life of most public pools is approximately 50 years.

Wading Pools

The *technically infeasible* exception provides an exception for altered elements from providing full compliance. In the same vein existing wading pools undergoing alterations should provide a compliant sloped entry unless *technically infeasible*. In instances when *site constraints* (of the existing wading pool) *prohibit modification or addition of elements, spaces or features that are in full and strict compliance with the minimum requirements* any of the transfer system options in 1009.5 can be applied.

Exercise Equipment

The question that the Department asks in the NPRM should not be will existing facilities have to reduce the number of available exercise machines and equipment but rather to what extent. A large facility with many of each type losing one of two machines of the same type may not affect the program while smaller facilities may be adversely affected.

Team Player Seating Areas

The main hindrance to the team bench area in an ice hockey rink is the boards. There is a raised board that the players must step over when the door from the ice to the player bench area is open. Hockey teams have been accommodated by having the board removed so that players could slide into the team bench area and the bench removed so they could get in and out of the area. In new construction the depth of the team area may be widened to make access to the bench area easier for sled hockey players.

Motorized Mobility Devices

We support the Department's proposal requiring covered entities that restrict the use of power-driven mobility devices by people without disabilities, to develop policies addressing which devices, and under what circumstances, individuals with disabilities may use power-driven mobility devices for the purpose of mobility (other than wheelchairs and scooters). The Department points out that public entities and accommodations may establish policies and procedures that address and distinguish among types of mobility devices, and we support this as well. There are mobility devices used by individuals with disabilities that are not "wheelchairs," but that must sometimes be restricted by public entities, conducting the reasonable policy modification analysis set forth in proposed 28 CFR §§35.137(c) & 36.311(c). In particular, Off-Highway Vehicles (OHV's, a category which includes but is not limited to All-Terrain Vehicles or ATV's) may be in this category. But, as the Department states, a blanket exclusion of all devices that fall under the definition of other power-driven mobility devices in all locations would likely violate the proposed regulation.

Proposed Definition of Other Power-driven Mobility Devices

We believe that the proposed definition is not overly inclusive. All such vehicles should be considered when determining if an individual with a disability needs it for access.

Definition of Wheelchair

We support the Department's two-definition scheme and, with a clarification in language, also support this definition. "Designed for use by individuals with mobility impairments" should be clarified in commentary to address the breadth of mobility impairments.

Segways

Segways are not "wheelchairs," which the Department has appropriately defined differently from power-assisted mobility devices. Segways should be included in the definition of mobility aid so that individuals with disabilities who need to use a Segway for mobility will be allowed to use the device in public accommodations.

A wheelchair is a particular type of mobility device and adding a Segway to the definition of wheelchair may confuse the application in certain instances. For example, if a Segway is considered a wheelchair, will a person using a Segway be allowed to stay on it to view the event or performance from a wheelchair seating location? If so, the person on the Segway will block lines of sight for individuals sitting behind and

beside as the height of the person on a Segway was not considered during the design as were individuals sitting in wheelchairs, scooters, and stadium seats. We believe a Segway is used by individuals with disabilities to assist in their mobility so Segways must be allowed to be used as a mobility device, but we simply can not treat it as wheelchair.

The Department has acted properly in not proposing the Department of Transportation (DOT) definition. This language should be preserved in the final rule. DOJ must not adopt the DOT common wheelchair definition, because technology continues to change. Sizes, dimensions and weights of wheelchairs vary dramatically. Defining wheelchairs in a way that could exclude certain individuals who use wheelchairs from public buildings and accommodations would be a very significant restriction of civil rights, for arbitrary and unnecessary reasons.

Definition of Mobility Devices

Section 37.3 of the Department of Transportation's (DOT) regulations implementing the Americans with Disabilities Act of 1990 (ADA) (49 CFR Parts 27, 37, and 38) defines a "common wheelchair" as a mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered. A "common wheelchair" does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied. DOT's definition of "common wheelchair" is used for the purposes of securing a "common wheelchair" on a vehicle and excludes Segways and perhaps other devices. While the definition of "common wheelchair" may be appropriate for DOT to be able to secure such a device on a vehicle, we agree with the Department that the definition is too limiting for use in public accommodations, including indoor and outdoor facilities. The Department will need to include one or more definitions of other various mobility devices to accommodate users of devices such as Segways.

Definition of "Manually Powered Mobility Aids"

Strollers used for children with disabilities should be covered by the definitions of manually powered mobility aids. A stroller is often used as a mobility device for a child with disabilities but is often misconstrued by owners or operators of public accommodations. One mother was told to get her kid out of the stroller if she wanted to enter the store. The child who was five was unable to walk and removing her from her stroller would cause leg spasms. When the mother tried to explain this, the store owner would not listen and banned her from entering.

There is no need for separate definition of "manually powered mobility aid." However, we believe that strollers used for children with disabilities often in lieu of a wheelchair should be added to the regulatory non-exhaustive list of "walkers, crutches, canes, braces and other similar devices."

Guaranteed Hotel Reservations

Without a guarantee, a traveler could arrive at his/her hotel and learn that they can not use the bathroom in the non-accessible room assigned them thus requiring they go elsewhere. The need for an accessible room for a person with a disability is a need not a desire such as a room with a view. Hotels and other places of lodging should reserve the accessible rooms for people with disabilities who require the features of an accessible room. The accessible rooms should not be released until all other rooms of that size/class are booked.

As non owners or operators of places of lodging, travel agents should not be subject to the requirements set out for places of lodging as they are at the mercy of the hotel staff to correctly reserve the accessible room. However, companies that provide tour packages (airfare, hotel, land tours, etc.) should be held to some standard so that when a person with a disability wants to purchase the package, he is able to purchase the package with a guaranteed accessible hotel room and accessible transportation for any land tours, airport shuttles, etc. provided as part of the package.

Holding and Releasing Accessible Rooms

We have found that most hotels do hold the accessible rooms until others of its class are booked and this practice must continue so that travelers with disabilities can have some confidence that when they reserve an accessible room it will be the room they are given upon check in. However, we have also found that many hotels do not provide accessible guest rooms among each type of room they offer especially rooms with two double/queen beds or adjoining rooms. Both of which are often requested by families and groups (i.e. sports teams).

Reselling Tickets for Accessible Seating

In response to the scenario posed by the Department in Question 20, in the Title III NPRM, we believe that this scenario should not occur very often as the space in question was sold to a particular user who passed his ticket onto a friend or family member. The only instance where it might occur is if a person needing an accessible seat obtains an inaccessible seat and requires relocating and no other accessible locations are unoccupied. In these rare instances, a person who does not need to be seated in an accessible location can be relocated from an accessible location for use by someone who needs the location if a comparable seat is available.

Sales of Tickets for Inaccessible Seating to an Individual with a Disability

As the secondary market is becoming a more prevalent means of obtaining tickets, venue operators should take into account the need for relocating a person with a disability to accessible seating locations when such seats are available. Venue operators could hold a few accessible seats for this purpose.

Release of Accessible Seating

Several of us have worked with many venues, both old and new, over the years and have found that the release of accessible seating is not a problem as most venues have a plan in place. The issue that is a problem is fraud which has never been adequately addressed by the Department. Fraud prohibits people with disabilities from obtaining tickets and venues are frustrated by inability to catch most fraud as the policies in place to protect people with disabilities foster the ability for fraud to continue. Several venues have considered creating a voluntary "Klub" so that people with disabilities willing to self identify and be placed on a list can purchase tickets from a set of accessible locations reserved for the "Klub." However, these venues are hesitant to put this "Klub" in place for fear of the Department's reaction even though people with disabilities frequenting the venues like the "Klub" idea. In addition to this idea, the Department must constructively address the issue of fraud and provide meaningful guidance to venue operators.

Another issue that has been a topic over the years is the sale of private seat licenses and multiple year season ticket packages. After the tickets these types of tickets/packages go on sale and the non-accessible seats are sold out, how long does a venue operator hold the accessible seats in these license/season ticket areas? Many venues have been criticized over the years for not adequately marketing these types of licenses/packages to people with disabilities so a meaningful time frame should be created. Once the seats are released for sale to the general public, allowing a person without a disability to purchase the accessible location must be limited to one season with the right of renewal if no one with a disability comes forward to purchase that location after it has reoffered for sale. Of course, if a person with a disability buys the license/season ticket, he/she is afforded the same ownership rights as the person without disabilities. In order to accommodate individuals with disabilities in these types of seating packages, a venue may want to keep a few of the locations open and sell them on a game by game basis as this will allow for relocation of a person with a disability for which you purchase the license for an inaccessible location or the relocation of a person without a disability who purchases or is given the license for the accessible locations. As these seats are usually located in premium areas, venue operators should have no problem selling them on a game by game basis.

Finally, DOJ needs to provide guidance to venue operators that the "wheelchair accessible" locations can be sold to people with other disabilities who require the use of the locations. For example, a person using a service animal may be better accommodated in the "wheelchair accessible" locations as may be a person with low vision who must keep his/her line of sight even when everyone else stands.

Tickets for Companions of Individuals with Disabilities

In working on large assembly areas and talking with designers, some of us have found that the number of companion locations is a function of ticket policy and not design. As seating areas in new venues are becoming more integrated in the seating manifest, ticketing policies to accommodate groups and families who wish to sit together can be achieved. Requiring five locations to have three “companion” locations seems an inadequate design solution to what really is a nondiscriminatory ticket policy issue.

Narrative Description of Movies

We support the Department's proposal to issue regulations requiring theaters to provide narrative description of all films. Parenthetically, we urge the Department to henceforth make reference to "narrative description" by use of the term "video description" as the latter term has been in use for decades and is more widely recognized and understood. Going to the movies is a very popular activity. Literally millions of people with disabilities would benefit from wider availability of video description. The National Health Interview Survey indicates that over 20 million adults in the U.S. experience significant vision loss even with eyeglasses or contacts. Moreover, the benefits of video description will accrue to a wide range of people with disabilities. People with multiple sclerosis, for example, often experience low vision that would interfere with their ability to view a movie. When video description is not available for a film, this prevents people with vision loss from enjoying a movie in the same way as people without disabilities. We believe strongly that video description should accompany all movies being produced in digital format and should be provided at all theaters that use digital technology to display movies. Indeed, video description should be provided in any instance and at every venue wherein visual information is an essential part of the information conveyed or performed.

Captioning of Movies

The Department should require that public accommodations that provide entertainment services of displaying movies (movie theaters) enable the display of captions and display the captions provided for any movie at all showings, unless such would impose an undue burden. The availability of captions has become commonplace, with the majority of first-run movies being produced and distributed for display with captions. Yet, at the same time, less than one percent (1%) of movie showings in America today are shown with captions. Because captions can and are being shown today, there is no reason and no need to tie the requirement of showing captions to the conversion of movies to digital format. Further, it is expected that the equipment being used today to display captions will also be used to display captions when the conversion of movies to digital format occurs. In addition, because that conversion is expected to take place over a significant period of time, due to anticipated costs of that conversion, caption display equipment can be recycled for use in theaters that have no equipment. Captioning is becoming increasingly inexpensive and feasible to provide. Captioning technology has changed significantly since the passage of the ADA and there is absolutely no reason to exempt a multi-billion dollar business from the requirements of the ADA.

Captioning of Safety and Emergency Information in Stadiums

Rather than pick an arbitrary number of seats, we believe that the type of facility and the resources the facility has should be the factors to consider. Many NHL hockey arenas only seat 18,000 to 20,000 but NHL teams have more resources than say a high school or college arena that seats the same number of people.

Emergency notification is covered by NFPA 72, thus the Department should simply refer to this standard for its emergency notification requirements. One requirement for emergency notification is back up power, to provide back up emergency power for a Jumbotron or other similar device would require a generator much too large to be feasible.

Means of Providing Captioning at Sports Stadiums

We believe that captioning must be provided via scoreboards and line boards in order to effectively communicate play by play announcements and all other public announcements. We believe that venues that provide information broadcast over the public address system also be provided on dedicated

captioning boards that are viewable from anywhere in the stadium or arena. Also, we believe the Department should consider the latest requirements for Variable Message Signage that will be incorporated within ANSI A117.1 2008.

A117.1 of the American National Standard for Accessible & Usable Buildings and Facilities has and will require the following:

805.7 Public Address Systems. Where public address systems convey audible information to the public, the same or equivalent information shall be provided in a visual format.

In its 2008 edition, the committee is providing new requirements for Variable Message Signs that would impact score and captioning boards and that DOJ should consider in determining the means of captioning required.

Variable Message Signs (VMS). Electronic signs that have a message with the capacity to change by means of scrolling, streaming, or paging across a background.

Variable Message Sign (VMS) Characters. Characters of an electronic sign are composed of pixels in an array. High resolution VMS characters have vertical pixel counts of 16 rows or greater. Low resolution VMS characters have vertical pixel counts of 7 to 15 rows.

703.7 Variable Message Signs.

703.7.1 General. High resolution variable message sign (VMS) characters shall comply with 703.2 and 703.7.12 through 703.7.14. Low resolution variable message sign (VMS) characters shall comply with Section 703.7.

703.7.2 Case. Low resolution VMS characters shall be uppercase.

703.7.3 Style. Low resolution VMS characters shall be conventional in form, shall be sans serif, and shall not be italic, oblique, script, highly decorative, or of other unusual forms.

703.7.4 Character Height. The uppercase letter “I” shall be used to determine the allowable height of all low resolution VMS characters of a font. Viewing distance shall be measured as the horizontal distance between the character and an obstruction preventing further approach towards the sign. The uppercase letter “I” of the font shall have a minimum height complying with Table 703.7.4.

EXCEPTION: In assembly seating where the maximum viewing distance is 100 feet or greater, the height of the uppercase “I” of low resolution VMS fonts shall be permitted to be 1 inch for every 30 feet of viewing distance, provided that the character height is 8 inches minimum. Viewing distance shall be measured as the horizontal distance between the character and where someone is expected to view the sign.

Table 703.7.4—Low Resolution VMS Character Height

Height above Floor to Baseline of Character	Horizontal Viewing Distance	Minimum Character Height
40 inches (1015 mm) to less than or equal to 70 inches (1780 mm)	Less than 10 feet (3048 mm)	2 inch (51 mm)
	10 feet (3048 mm) and greater	2 inch (51 mm), plus 1/5 inch (5.1 mm) per foot (305 mm) of viewing distance above 10 feet (3048 mm)
Greater than 70 inches (1780 mm) to less than or equal to 120 inches (3050 mm)	Less than 15 feet (4570 mm)	3 inches (76 mm)
	15 feet (4570 mm) and greater	3 inches (76 mm), plus 1/5 inch (5.1 mm) per foot (305 mm) of viewing

mm)		distance above 15 feet (4570 mm)
Greater than 120 inches (3050 mm)	Less than 20 feet (6096 mm)	4 inches (102 mm)
	20 feet (6096 mm) and greater	4 inches (102 mm), plus 1/5 inch (5.1 mm) per foot (305 mm) of viewing distance above 20 feet (6096 mm)

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703.7.5 Character Width. The uppercase letter “O” shall be used to determine the allowable width of all low resolution VMS characters of a font. Low resolution VMS characters shall comply with the pixel count for character width in Table 703.7.5.

Table 703.7.5 Pixel count for Low Resolution VMS Signage

Character Height (Pixels)	Character Width Range (Pixels)	Stroke Width Using Range (Pixels)	Inter-Character Spacing Range (Pixels)
7	5-6	1	2
8	6-7	1-2	2-3
9	6-8	1-2	2-3
10	7-9	2	2-4
11	8-10	2	2-4
12	8-11	2	3-4
13	9-12	2-3	3-5
14	10-13	2-3	3-5
15	11-14	2-3	3-5

703.7.6 Stroke Width. The uppercase letter “I” shall be used to determine the allowable stroke width of all low resolution VMS characters of a font. Low resolution VMS characters shall comply with the pixel count for stroke width in Table 703.7.5.

703.7.7 Character Spacing. Spacing shall be measured between the two closest points of adjacent low resolution VMS characters within a message, excluding word spaces. Low resolution VMS character spacing shall comply with the pixel count for character spacing in Table 703.7.5.

703.7.8 Line Spacing. Low resolution VMS characters shall comply with 703.2.8.

703.7.9 Height Above Floor. Low resolution VMS characters shall be 40 inches (1015 mm) minimum above the floor of the viewing position, measured to the baseline of the character. Heights of low resolution variable message sign characters shall comply with Table 703.7.4, based on the size of the characters on the sign.

703.7.10 Finish. The background of Low resolution VMS characters shall have a non-glare finish.

Please visit <http://www.iccsafe.org/cs/standards/a117/index.html> for the final version of VMS requirements.

Captioning of Game-Related Information in Sports Stadiums

Not requiring this level of captioning would fall below what is already required by the International Building Code (IBC).

1108.2.6.2 Public address systems. Where stadiums, arenas and grandstands provide audible public announcements, they shall also provide equivalent text information regarding events and facilities in compliance with Sections 1108.2.6.2.1 and 1108.2.6.2.2.

1108.2.6.2.1 Prerecorded text messages. Where electronic signs are provided and have the capability to display prerecorded text messages containing information that is the same, or substantially equivalent, to information that is provided audibly, signs shall display text that is equivalent to audible announcements.

Exception: Announcements that cannot be prerecorded in advance of the event shall not be required to be displayed.

1108.2.6.2.2 Real-time messages. Where electronic signs are provided and have the capability to display real-time messages containing information that is the same, or substantially equivalent, to information that is provided audibly, signs shall display text that is equivalent to audible announcements.

Start of Construction

The Department proposes using the start of construction as the triggering event for applying the proposed standards to new construction under Title III. We believe that the triggering event should be the date of permit application as the applicant would have had to consider the applicable state and federal standard in schematic design that is often necessary to submit with the application. The date of permit application is a typical triggering event when jurisdictions introduce an updated code because in many cases, the date the permit is issued is too late as plans have already been developed with an anticipated approval from the authority having jurisdiction.

Time-Shares; Condominium Hotels

The scoping for a time share or a condominium hotel should be based on the usage of the facility. A timeshare is traditionally used for short term stays and thus should be included in the requirements for transient occupancies. A condominium hotel that has residential units and transient units needs to provide accessible units for each function thus the units being sold as residential units would comply with residential requirements, the units that are included in the hotel section would comply with transient requirements. Generally, when such a building is being planned the number of each type of unit is set forth. The requirements for new construction from each type must apply at the time of construction as speculation on what will happen later and if certain units or floors will be converted to another use could be said of any building being constructed.

Number of Accessible Units Required for Time-Shares and Condominium Hotels

Each category of usage must contain accessible units, thus if there is going to be a rental program, then certain number of units to be retained in the rental program need to be accessible. Again, each program must be looked at separately and the appropriate rules apply. For example, some time shares owners own a week of time at a resort and the deed does indicate a unit number, but that is not necessarily the exact unit the person will be staying in. In this circumstance, the management company has more control over the accessible units and can reserve/hold them for individuals who need to rent an accessible unit. The final rule should remind all impacted that the requirements of the Fair Housing Accessibility Guidelines will impact new timeshares where the units can be occupied as the person's place of abode.

ADA Coverage for Properties That Are Converted to Time-Shares and Condominium Hotels

Creating a rental program in an existing timeshare or condominium building would require the inclusion of accessible units of all types offered in the rental program. If no accessible units exist or do not exist in a particular category (i.e. 2-bedroom units), then the units would need to be retrofitted per the barrier removal requirements.

Transient Place of Lodging

Two weeks or less to establish a dividing line between transient and residential is too short a duration as some business and vacation travelers may stay for more than a two week duration. As the IBC

application of transient vs. a place of abode typically relies on a timeframe of 30 days or more, we believe that this should be the definition adopted by the Department in order to harmonize the standards.

In addition, it is appropriate that the scoping and technical requirements provided for transient lodging impact hotels, motels, and similar occupancies and separate criteria impact residential dwelling units (i.e., previously regulated by Section 504 and the Uniform Federal Accessibility Standards) and as the Federal Fair Housing Accessibility Guidelines impacts multi-family housing.

Please note that for the first time; the 2008 edition of ANSI A117.1 will provide technical requirements for visitable or Type C units.

Hotel Beds

Hotels have begun to buy high beds in all of their guest rooms. If these beds are in the accessible rooms, a room that should be totally accessible to a guest using a wheelchair, a guest of short stature, a guest with other mobility disabilities, etc. is now inaccessible because the person can not transfer onto and off the bed.

The Department has never adequately addressed this concern. We propose that the Department address this important concern in its final regulations. Specifically, we urge the Department that height of the top of the mattress of the bed be between 18 to 24 inches high measured from the finish floor. Also, beds should have open floor spaces underneath in order to accommodate the use of a lift as follows: At least one side of the bed shall provide vertical clearance for the full length of the bed, excluding legs. Clearance shall be 6 1/2 inches high minimum measured from the finish floor to the underside of the bed frame and 30 inches deep minimum.

In fact, ANSI A117.1 has been modified to better accommodate the various needs of traveler's with disabilities

1002.15.2 Bed Frames. At least one bed in Accessible dwelling units and sleeping units shall be provided with an open bed frame.

Homeless Shelters, Transient Group Homes, Halfway Houses, and Other Social Services Establishments

We believe that homeless shelters, transient group homes, halfway houses, and other social services establishments should be required to comply with the number of accessible units required for transient occupancies as outlined in Section 224 of the Revised ADA/ABA Accessibility Guidelines and made to comply with the technical provisions in Section 806. If they are intended as a person's place of abode (as discussed in Question 52) they should be built in accordance with the requirements of Section 809 for residential dwelling units.

Dormitories and Student Housing

In order to ensure compliance with Section 504 of the Rehab Act, accessible dwelling units should be required at places of education, i.e. dormitories, in order to ensure equal opportunities in housing for students with disabilities.

Hospital Rooms

Hospital rooms should be dispersed throughout the facility in as many categories as possible, i.e., coronary care unit, general purpose floors, etc... if this type of distribution is *technically infeasible* as defined by the Department's Standard for Accessible Design in existing health care facilities, an exception should be provided to allow specialized care units to be located in rooms, units or floors most proximate to the inaccessible specialty area.

Respectfully submitted,

Adapted Physical Activity Council
American Association of People with Disabilities
American Foundation for the Blind
American Music Therapy Association
APSE: The Network on Employment
Association of University Centers on Disabilities
Bazelon Center for Mental Health Law
CHADD - Children and Adults with Attention-Deficit/Hyperactivity Disorder
Easter Seals
Epilepsy Foundation
National Center for Learning Disabilities, Inc.
National Consortium for Physical Education and Recreation for Individuals with Disabilities.
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National Spinal Cord Injury Association
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
United Cerebral Palsy