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## Accessibility Guidelines: Knowing When to Apply Which Regulations

by David Blake

*Editor's Note: In the article that appeared in the April/May issue of AIA | DC News entitled "The Revised ADAAG: Do You Need to Follow It Now?" David Blake, Esq., reported that the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) remain in force for certain private sector buildings (and state and local government buildings) until the U.S. Department of Justice approves revised guidelines that were published in the Federal Register by the U.S. Access Board on July 23, 2004. AIA | DC member Leora Mirvish, AIA, wrote to point out that a different regulatory framework applies to federal government projects. In this follow-up article, David Blake navigates the regulatory labyrinth to clarify—to the extent possible when the subject is government regulation—this important issue.*

Every architect today is familiar with the accessibility requirements of the **Americans with Disabilities Act (ADA)**, but firms that do both federal and nonfederal work know that, depending on the project, they must comply with one of two sets of accessibility regulations: the ADA for certain nonfederal facilities, both public and private, and the **Architectural Barriers Act (ABA)** for federal facilities.

To complicate things further, two departments of the federal government are responsible for administering the accessibility requirements of the ADA. The **Department of Justice (DOJ)** is charged with ensuring that state and local government buildings, private facilities that constitute public accommodations, and private commercial facilities are accessible. The **Department of Transportation (DOT)** is responsible for ensuring that public transportation facilities are accessible.

As noted in last month's article, DOJ has not yet adopted the revised ADAAG published by the **U.S. Access Board**. To that should be added that neither has DOT. Until they do, design professionals do not, and indeed should not, follow the revised ADAAG, as it is not the enforceable standard under Titles II or III of the ADA. Firms that design transportation facilities should be aware that DOJ and DOT may not necessarily adopt the revised ADAAG at the same time. If adoption by the two departments does not take place concurrently, care will need to be taken to comply with the correct set of regulations depending on the project type.

In the federal arena, the Architectural Barriers Act generally applies to facilities that are constructed, leased, or financed by the United States. Like the ADA, the ABA requires that those facilities be readily accessible to individuals with disabilities. Four federal agencies or departments are subject to the ABA: the **General Services Administration (GSA)** the **United States Postal Service (USPS)**, the **Department of Housing and Urban Development (HUD)**, and the **Department of Defense (DOD)**. Each of these entities is charged with developing the regulations—

the accessibility guidelines—for the design of facilities that it controls or funds. Wisely, in 1984, all four—GSA, USPS, HUD, and DOD—jointly adopted a single set of accessibility guidelines: the **Uniform Federal Accessibility Standards (UFAS)**.

The accessibility guidelines that the U.S. Access Board published in the Federal Register on July 23, 2004, and mentioned in the earlier article on this topic, actually pertained to both the ADA and the ABA. Those guidelines consisted of a single set of technical requirements for both the ADA and the ABA, with separate scoping sections for each. To the extent the guidelines apply to the ADA, they can be referred to as the "revised ADAAG." Similarly, to the extent they apply to the ABA, they can be referred to as the "revised ABAAG" (or the successor to the UFAS).

One can presume that the U.S. Access Board, by publishing a single set of accessibility guidelines that address both the ADA and the ABA, intended to foster uniformity in these guidelines for all affected facilities, both federal and nonfederal. But just as DOJ and DOT may decide independently whether or not to adopt the revised ADAAG, GSA, USPS, HUD, and DOD have the regulatory authority to adopt or not adopt the revised ABAAG, each according to their own timetable.

To date, neither HUD nor DOD has adopted the revised ABAAG; facilities funded or controlled by those two agencies must continue to comply with the UFAS. GSA and USPS, however, have adopted the revised ABAAG. In general, a GSA project must comply with the revised ABAAG if either (a) construction commences after May 8, 2006, or (b) the project pertains to a lease that was executed after May 8, 2006. For USPS projects, the factors for determining when the revised ABAAG must be followed are a bit more complex. In general, however, the revised ABAAG applies to all USPS projects that have not reached 30 percent design completion by October 1, 2005, and for all design/build projects for which the solicitation was issued after October 1, 2005.

Clearly, it would appear to be in the interest of all parties for all six of these federal agencies and departments to adopt the U.S. Access Board's revised accessibility guidelines. Until that happens, design professionals will need to be attentive and alert to the regulatory requirements of each.

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