

PRACTICE NOTES

The Revised ADAAG: Do You Need to Follow It Now?

by David A. Blake, Esq.

The Federal Register states that significant revisions to the *Americans with Disabilities Act Accessibility Guidelines (ADAAG)* are effective as of September 21, 2004, so as a licensed professional you are required to follow them now, right? Wrong. Under Title III of the ADA, new public accommodations and commercial facilities must be designed so that they are readily accessible to and usable by individuals with disabilities. In 1991, the **Architectural and Transportation Barriers Compliance Board (the Access Board)** published accessibility guidelines titled *ADA Accessibility Guidelines for Buildings and Facilities (ADAAG)*. Later that year, the **U.S. Department of Justice (DOJ)** adopted ADAAG as the design standard for determining compliance with Title III of the ADA.

On July 23, 2004, the Access Board published comprehensive revisions to the ADAAG in the Federal Register and stated that the revisions become effective September 21, 2004 (revised ADAAG). Understandably, this may have caused you to believe that you needed to start following the revised ADAAG as of that date. But the Access Board does not have regulatory or enforcement authority. The Revised ADAAG does not become an enforceable standard until such time as DOJ adopts it, which it has not yet done and is not anticipated to do until this summer or later.

Although it is difficult to predict when the revised ADAAG will become an enforceable standard, it is clear that you do not need to follow it now to comply with the ADA. And though many professionals might want to begin complying with the revised ADAAG in order to "get ahead of the game," that strategy could result in serious problems. To the extent that the revised ADAAG is more lenient than the ADAAG for particular technical requirements, following the revised ADAAG now could actually result in violations of the ADA.

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