



American Hotel & Lodging Association

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March 13, 2012

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

The Honorable Thomas Perez
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Re: New ADA Title III Requirements for Accessible Pool and Spa Entries

Dear Attorney General Holder and Assistant Attorney General Perez:

We are writing in response to the January 31, 2012, Department of Justice (DOJ) guidance document *2010 Revised ADA Requirements: Accessible Pools – Means of Entry and Exit*. We share the laudable goals of the ADA as enforced by the Department of Justice over the past 20 years. Breaking down barriers of discrimination for millions of Americans with disabilities has created tremendous opportunities to share in the American experience.

We are a coalition of industries and associations whose members are impacted by this Guidance. Through the guidance document, and in meetings, we believe the Department changed the intent of the 2010 Americans with Disabilities Act (ADA) regulations by adding new requirements and reducing flexibility for all commercial facilities. The Department rejects reasonable accommodations such as allowing portable lifts and sharing of lifts between multiple pools and spas. Because the guidance document representing this shift was issued on January 31, 2012, our members and industries have been given less than two months to comply. We are disappointed that in a March 9, 2012 letter to the American Hotel & Lodging Association, Assistant Attorney General Thomas Perez fails to offer any reasonable explanation or justification for changes represented by the January 31, 2012 guidance.

Businesses across the country want to do the right thing by complying with the ADA. But it is incumbent on the Department to ensure that it is not imposing costly unnecessary burdens, and that its regulations are clear and in line with the balance between modifying facilities and limiting the cost impacts that the legislation preserves. Businesses seeking to comply with the ADA have been given conflicting guidance and interpretation from local and state enforcement

offices around the country. There appears to be tremendous variations in interpretation by these local officials, many of whom are under the impression that DOJ intends this Guidance to apply only to new construction.

In its final 2010 Regulations implementing the revised Accessibility Guidelines, the Department did not require that pool lifts be permanently affixed--indeed no specific type of lift is indicated as long as the lift meets the technical requirements of the Guidelines. In fact, during the rulemaking process, portable lifts were considered, as was exempting small pools with less than 300 linear feet. Since those regulations were issued, the Department has made clear that facilities will be expected to install the more costly and complicated permanently affixed lifts, unless doing so would not be readily achievable and then the operator will be required to install a portable lift.

While the January guidance document purports to preserve flexibility by using "may" to describe whether a hotel operator must install a fixed lift, it makes clear the preference for these lifts. Therefore, the document represents a subtle but very significant shift away from the regulatory text where no preference is expressed and "readily achievable" is the difference between installing a lift and not installing a lift.

The Department's letter of March 9 to the American Hotel & Lodging Association further maintains this preference for fixed lifts despite there being no support for it in the regulations or Access Board Guidelines. Accordingly we maintain that the Department has now created a new obligation for pool and spa operators—that they must have a fixed lift rather than a portable lift where the new regulations do not express a preference for one or the other.

The Department has offered no justification for this change in interpretation. Similarly, the Department has not taken into consideration costly requirements for electrical bonding under the National Electrical Code, reconstruction of pool decks, increased insurance costs, and the liability concerns for pools and spas that do not have lifeguards to ensure the safety of children and other guests and equipment. Furthermore, hotels that have already been providing portable lifts report that they have been used or requested rarely, if at all, which makes the expense and complications of installing permanent lifts a poor investment with little chance of a return.

Unless these new requirements are delayed, they will require affected businesses to make substantial structural modifications to their existing pools in just a few weeks. Equipment necessary to make these retrofits is not available in sufficient quantities for all of these affected businesses to comply with the deadline set by the Attorney General. In some parts of the country, that are still experiencing winter weather, the conditions do not permit such work to commence. The result will be thousands of lawsuits by unscrupulous attorneys thereby incurring legal costs that should be avoided, placing unnecessary financial burdens on covered businesses at a time when our economy still has high unemployment, and distracting business officials from focusing on compliance in a reasonable period of time.

Consequently, we are requesting that the Department review its current lift guidance and make the following changes:

- a) Extend the compliance date for pool lifts from March 15, 2012 to March 15, 2013 to give businesses a reasonable opportunity to comply with the January 31 revised guidance;
- b) Allow the use of portable lifts and shared lifts for adjacent pools, as long as such lifts are used in a manner which ensures the safety of the user and other guests; and
- c) Issue clearly articulated guidelines defining the criteria necessary to be granted an exemption to the lift requirement if "not readily achievable."

These simple changes would be fair to all the parties involved. They would ensure that commercial facilities are, as they should be, available to Americans with disabilities, while at the same time easing the economic burden on small businesses and allowing them sufficient time to comply with the ADA.

Because the current compliance date is less than one week away, we look forward to your prompt reply.

Respectfully submitted,

American Hotel & Lodging Association

Asian American Hotel Owners Association

American Resort Development Association

International Association of Amusement Parks and Attractions

National Apartment Association

National Multi Housing Council

National Association of RV Parks & Campgrounds

The Real Estate Roundtable

U.S. Chamber of Commerce

World Water Park Association