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OCT 3 1 2008

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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SUBJECT: Access for People with Disabilities

It is the goal of the Department of Defense (DoD) to make its facilities accessible to persons with disabilities. To achieve that goal, the Department intends to go beyond the minimum requirements of law. Even if a facility is exempt from coverage under the Architectural Barriers Act of 1968 (ABA), compliance with the standards identified in this memorandum is recommended to the maximum extent that is reasonable and practicable without degrading the facility's military utility.

This memorandum updates DoD standards for making facilities accessible to people with disabilities. DoD is one of four Federal agencies that issue standards under the ABA. The Department also establishes accessibility requirements under Section 504 of the Rehabilitation Act of 1973, as amended. Currently, as a matter of policy, the more stringent of either the *Uniform Federal Accessibility Standards* (49 FR 31528) or the 1991 version of the *Americans with Disabilities Act Accessibility Guidelines* is in effect within DoD and for recipients of DoD financial assistance.

The United States Access Board has issued an update of the ABA and Americans with Disabilities Act (ADA) guidelines as a single rule published at Part 1191 of title 36, Code of Federal Regulations, which contains scoping provisions specifying what must be accessible and technical requirements specifying how access is to be achieved. The rule is divided into three parts: a scoping document for ABA facilities (ABA Chapters 1 and 2), a scoping document for ADA facilities (ADA Chapters 1 and 2), and a common set of technical criteria referenced by both scoping documents (Chapters 3 through 10).

OSD 09758-08

DoD hereby adopts ABA Chapters 1 and 2 and Chapters 3 through 10 as its standards (the "DoD standards") under the ABA and also under Section 504 of the Rehabilitation Act. Subject to the special provisions specified in the attachment provided on DoD facilities, which is also part of the DoD standards, you are directed to meet the requirements of ABA Chapters 1 and 2 and Chapters 3 through 10, and to require recipients of financial assistance from your organization to do the same. Such recipients include only those private sector programs and activities covered by Section 504 of the Rehabilitation Act. Most DoD contractors are not covered but will likely be subject to the Americans with Disabilities Act.

The Secretary of Defense Memorandum dated October 20, 1993, *Access for People with Disabilities*, is hereby rescinded.

Any questions may be directed to Mr. Clarence A. Johnson at (703) 571-9321.

Attachment:
Access for People With Disabilities

## ACCESS FOR PEOPLE WITH DISABILITIES

**1. GENERAL.** This attachment describes the manner in which facilities designed, constructed (including additions), altered, leased, or funded by the Department of Defense (DoD) are to be made accessible to people with disabilities in accordance with the Architectural Barriers Act of 1968 (ABA), as amended, 42 U.S.C. § 4151, *et seq.*, and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

On July 23, 2004, the United States Access Board issued updated accessibility guidelines for newly constructed, altered, and leased facilities covered by the ABA and Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, *et seq.* These guidelines were published in the *Federal Register* on July 23, 2004 (69 FR 44083), and are online at < http://www.access-board.gov/ >. [1]

Requirements for new construction, alterations, and leased facilities vary and are specified in these new DoD Standards. In general, worldwide, all facilities designed, constructed, altered, leased, or funded by DoD that are open to the public, or to limited segments of the public, or that may be visited by the public, or by limited segments of the public, in the conduct of normal business, shall be designed and constructed to be accessible to persons with disabilities. The types of facilities to which these DoD Standards apply include, but are not limited to, the following:

(a) All housing, including military family housing and unaccompanied personnel housing.[2]

(b) All morale, welfare, and recreation facilities, including non-appropriated fund facilities available to dependents or retirees.

(c) All hospitals and facilities for the care or rehabilitation of persons who are sick or injured.

(d) All relocatable facilities, including those acquired as "personal property." Relocatable facilities, including those acquired as "personal property," shall be evaluated, for purposes of applying these DoD Standards, as though they are permanent facilities.

(e) All manufacturing facilities, administrative facilities, educational facilities, and any other facilities where civilian workers may be employed, including facilities constructed under other than military construction authorizations and including contractor-owned facilities where DoD is funding all or part of the construction.

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[1] As published in the *Federal Register* and the *Code of Federal Regulations*, the Board's final rule consists of five Appendices (not three parts): Appendix A is the Table of Contents; Appendix B is ADA Chapters 1 and 2 (scoping requirements); Appendix C is ABA Chapters 1 and 2 (scoping requirements); Appendix D is Chapters 3 through 10 (common technical requirements); and Appendix E is the List of Figures and Index. On the Board's website, the final rule is organized by Chapters instead of Appendices.

[2] See definition of "residential dwelling unit" at section F106.4 of ABA Chapter 1.

The Department of Defense shall require as part of the joint venture agreement in all public-private ventures which include facilities, including privatized housing, that those facilities be designed and constructed in accordance with these DoD Standards.

In addition to these DoD Standards, facilities of all types shall comply with any applicable provision of law and regulation which may include the following:

i. The Fair Housing Amendments of 1988, 42 U.S.C. §§ 3601-3620, which prohibit discrimination on the basis of disability in multi-family housing, including military family housing, and require elimination of architectural barriers in common areas and construction of accessible units on a percentage basis.

ii. The Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., which prohibits discrimination in, among other things, public accommodations and commercial facilities and may apply to some entities that occupy space on DoD property or are housed in DoD or DoD-funded facilities. Entities that might be covered include State and local governments, banks, childcare centers, and fast food stores. In addition, standards for nondiscrimination in employment under this Act apply to Federal employment under Section 501 of the Rehabilitation Act. This includes standards for elimination of architectural barriers.

iii. Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791(b), and implementing regulations at 29 CFR 1614.203, which prohibit discrimination in Federal civilian employment against a qualified person with a disability and require elimination of architectural barriers for employees and applicants with disabilities.

**2. PRIMARY FUNCTION AREAS.** Requirements for alterations (Section F202.4 of ABA Chapter 2) and leased facilities (Section F202.6.2 of ABA Chapter 2) refer to "primary function areas." DoD defines a primary function area as an area that contains a major activity for which the facility is intended. This includes areas in which a DoD entity or a recipient of DoD financial assistance provides services to the public or limited segments of the public, as well as offices and other work areas in which the activities of a DoD entity or a recipient of DoD financial assistance are carried out.

In accordance with Section F202.4 of ABA Chapter 2, an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the rest rooms, telephones, and drinking fountains serving the altered area, is readily accessible to and usable by individuals with disabilities, unless such alterations would increase the cost and scope of the overall alteration by more than twenty percent. If the costs of providing an accessible path of travel to the altered area would increase the cost and scope of the overall alteration by more than twenty percent, the path of travel

shall be made accessible to the extent possible at least up to that twenty percent increase.[3] Priority should be given to those elements that will provide the greatest access in the following order:

(a) An accessible route and accessible entrance to connect the altered area and site arrival points;

(b) An accessible restroom for each sex or a single unisex restroom;

(c) Accessible telephones;

(d) Accessible drinking fountains; and

(e) Accessible parking spaces.

In facility planning, if a series of alterations will be made to areas containing a primary function, and those alterations together will not provide an accessible path of travel to the altered areas, the total costs of the alterations planned within the three-year period after the initial alteration shall be considered when determining obligations to provide an accessible path of travel in accordance with this paragraph.

**3. EXCLUSIONS.** The following facilities need not comply with these DoD Standards:

(a) Facilities, or portions of facilities, on a military installation[4] that are designed and constructed for use exclusively by able-bodied military personnel.

(b) Reserve and National Guard facilities, or portions of such facilities, owned by or under the control of the Department of Defense, that are designed and constructed for use exclusively by able-bodied military personnel.

(c) Facilities obtained in emergencies such as natural disasters or in an area where contingency operations are being conducted.

Nevertheless, since the intended use of such excluded facilities may change with time or in emergencies, compliance with these DoD Standards is recommended to the maximum extent that is reasonable and practicable without degrading the facility's military utility.

**4. FACILITIES IN OTHER COUNTRIES.** Facilities in other countries for which the United States contributes a portion of the construction cost but does not control design criteria (such as NATO-funded facilities) need not comply with these standards, but accessibility is recommended if obtainable. Facilities being constructed by or for use by the United States under the laws, codes, rules, and regulations of a host nation need not be accessible pursuant to U.S. law, but may need to comply with similar requirements

[3] A DoD Component may choose to expend funds beyond twenty percent but is not required to do so by these DoD Standards.

[4] As defined in Section 2910(4) of the Defense Base Closure and Realignment Act of 1990.

of the host nation, as applicable international agreements provide. Likewise, facilities leased by the United States in other countries need not be accessible pursuant to U.S. law, but may need to comply with similar requirements of the host nation, as applicable international agreements provide. Nevertheless, in order to avoid applying different and lesser standards to DoD facilities located outside the United States, compliance with these DoD Standards should be sought in all instances to the fullest extent that is reasonable and practicable without degrading the facility's military utility.

**5. WAIVERS.** Any other deviation from these DoD Standards shall be made only through the waiver or modification process. Requests for waivers or modifications are to be forwarded through the chain of command for approval by the Principal Deputy Under Secretary of Defense (Personnel and Readiness), who represents DoD on the United States Access Board. Waivers and modifications will be considered on a case-by-case basis and granted only if the waiver or modification is clearly necessary.

**6. DOCUMENTATION.** DoD Component Heads shall ensure that each contract, grant, or loan for the design, construction, or alteration of a facility subject to these DoD Standards and each lease for a facility subject to these DoD Standards:

(a) Incorporates these DoD Standards in the specifications for the design, construction, or alteration of the facility;

(b) Specifies that any leased facility meets these DoD Standards, or has been or will be altered to meet these Standards; or

(c) Includes a statement that these DoD Standards have been waived or modified by the Principal Deputy Under Secretary of Defense (Personnel and Readiness), as specified in an attached copy of the waiver or modification.

In addition, if a determination is made that a facility is not subject to these DoD Standards, the DoD Component Head must ensure that documentation is maintained to justify the determination.

**7. APPLICABILITY.** The provisions of this memorandum apply to the Office of the Secretary of Defense, the Military Departments (including their Reserve components), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense.

These new DoD Standards are effective immediately. All projects in or after Fiscal Year 2010, regardless of the source of funds, must be programmed, designed, and constructed to comply with these DoD Standards. All projects before Fiscal Year 2010, regardless of the source of funds, must comply with these DoD Standards to the maximum extent feasible.

These DoD Standards shall apply to all leases for which a solicitation, including any sole source solicitation, is issued after the date of this memorandum. These standards shall also apply to existing leases, which shall be brought into compliance within five years of the date of this memorandum or upon extension or renewal of a lease after the date of this memorandum (whichever comes first), treating the extension, renewal, or existing lease as though it were a new lease.