



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Chief Financial Officer**  
**Assistant Secretary for Administration**  
Washington, D.C. 20230

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Memorandum To: Department of Commerce Grants Council

From: *for* Barry E. Berkowitz   
Senior Procurement Executive and  
Director for Acquisition Management

Subject: Department of Commerce Wide Special Award Condition for new  
Americans with Disabilities Act Accessibility Standards

On September 15, 2010, the Department of Justice (DOJ) issued revised regulations under Title II (28 C.F.R. part 35) and Title III (28 C.F.R. part 36) of the Americans with Disabilities Act (ADA), including the promulgation of revised Standards for Accessible Design (commonly referred to as "2010 Standards"). See 75 FR 56164 and 56236. On March 11, 2011, DOJ published certain corrections to the revised regulations. See 75 FR 13385 and 13286. The revised ADA Title II and Title III regulations became effective on March 15, 2011 and will be published in the 2011 edition of the *Code of Federal Regulations*; however, the 2010 Standards are not required for new construction and alteration projects until March 15, 2012. See 28 C.F.R. §§35.151(c)(2) and 36.406(a)(2). On March 15, 2012, the 2010 Standards will replace the Uniform Federal Accessibility Standards (commonly referred to as "UFAS") and the 1991 ADA Standards for Accessible Design (commonly referred to as "ADAAG" or the "1991 Standards") as accessibility standards for new construction, alterations, program accessibility, and barrier removal under the ADA. In this connection, the DOC regulations, located at 15 C.F.R. part 8b, implementing the accessibility standards under Section 504 of the Rehabilitation Act of 1993 will be revised (with assistance from DOJ) to incorporate the new 2010 Standards.

Until such time as Federal Executive Agencies update their Section 504 implementing regulations, DOJ has determined that Agencies may issue guidance to entities covered by the federally-assisted provisions of Section 504 permitting, but not requiring, public entities covered by Title II of the ADA and private entities covered by Title III of the ADA to use the 2010 Standards as a means of complying with the Section 504 accessibility requirements so long as the Agency guidance: (1) states that DOC deems compliance with the 2010 Standards as an acceptable means of complying with Section 504 accessibility requirements for new construction and alterations; and (2) once a covered entity selects an applicable accessibility standard for new construction or alterations under Section 504, that standard must be applied to the entire facility. Consistent with the guidance from DOJ, DOC would like to provide financial assistance recipients with the option of complying with either the 2010 Standards or the UFAS for purposes of complying with the Section 504 accessibility requirements for new construction and alteration projects where the physical construction or alteration activities commence on or after September 15, 2010 and before March 15, 2012. Please see the table below for clarification of the dates for applicable standards:

<b>Compliance Date for New Construction or Alterations</b>	<b>Applicable Standards</b>
Before September 15, 2010	1991 Standards or UFAS
On or after September 15, 2010, and before March 15, 2012	1991 Standards, UFAS, or 2010 Standards
On or after March 15, 2012	2010 Standards

DOC recognizes that most recipients of federal financial assistance are also subject to the ADA and wishes to minimize the need to comply with multiple accessibility standards; moreover, many recipients prefer to use the 2010 Standards because they are written using language that is more consistent with the language used in many state building codes. To that end, the Federal Assistance Law Division (FALD) drafted a Special Award Condition (SAC) to serve as a permitted deviation from Section C.01.c. of the *DOC Financial Assistance Standard Terms and Conditions* (March 2008) allowing eligible recipients to elect use of the 2010 Standards for new construction and alteration projects. The new SAC is consistent with the requirements of the DOJ guidance on this subject.

Please take appropriate steps to distribute this memorandum and the attached SAC to all grant making bureaus. Bureaus should review their award portfolio and take steps to amend potentially affected awards to include the SAC, as necessary.

Attachments