

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the William J. Clinton
Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Domestic Policy Council

Series/Staff Member: Janet Abrams

Subseries:

OA/ID Number: 7389

FolderID:

Folder Title:

[ADA [Americans with Disabilities Act] Rule Change Amendment] [loose]

Stack:

S

Row:

98

Section:

1

Shelf:

7

Position:

2

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

22-Dec-1995 00:36am

TO: justice
FROM: owner-justice

SUBJECT: ADA Rule Change, Amendment

December 21, 1995

ADA UPDATE - I. PROPOSED ADA RULE CHANGE II. FIRST ADA AMENDMENT

I. THE DEPARTMENT OF JUSTICE (DOJ) has published a proposed rule change extending ADA curb cut deadlines five and ten years. Communities would be required to include a schedule for implementation in their ADA transition plans. DOJ asks that citizens provide comments before January 26, 1996 (official notice of the proposed rule is enclosed).

BACKGROUND. On March 24 of this year five pro-ADA Senators - Harkin, Dole, Kennedy, Hatch and McCain - wrote a letter to Attorney General Janet Reno urging the Department of Justice to adopt this extension of deadlines. (letter enclosed).

The Senators said, "we have heard that curb cuts are a unique, significant capital expense, and believe that our intent would be more properly fulfilled over a longer period of time."

We know that members of the disability community hold different views about the proposed rule change. Many are strongly opposed.

They point out that:

1. Accessible communities have been required by 504 for almost 20 years. Claims of sudden hardship under ADA have no merit.
2. Granting an extension of time for installing curb cuts now sends the wrong message to those communities that have complied, and to those that have not. It would encourage continued, and perhaps expanded non-compliance. Will we be granting further extensions of time after these expire?
3. For the disability community to support or acquiesce in an extension of time on curb cuts would convey the impression that we are weak, that we are not willing to fight for principle. It would encourage stalling in all areas of compliance. It would encourage further assaults on all of our rights and programs.
4. Lack of curb cuts are serious barriers to the implementation of

other aspects of the ADA. For example people will be prevented from using accessible fixed route transportation and from reaching places of employment. Costs for paratransit and welfare will remain high.

These are valid points. They may constitute good reason to oppose the rule change.

Proponents of the rule change also offer valid considerations - good reasons to give very careful thought to our responses to the DOJ.

1. All of us have the greatest respect for the Senators signing the March 24 letter, and for those in the DOJ who propose this rule change. Many of them have been our staunch allies over the years - on the ADA and a multitude of other issues. They want us to win now. They know politics. We need them in the current and coming battles to maintain and expand our rights, and the programs that make those rights real. If they think that this rule change is politically and economically necessary, that it will, in the long run, advance compliance with the ADA, we should try to understand why.

2. Under the proposed rule change, every community with 50 or more employees taking advantage of the extended deadline is required to have a written schedule committing to specific dates for installing curb cuts. Followed up by appropriate local advocacy, the new rule could result in significant numbers of delinquent communities making new commitments to install curb cuts in order to qualify for the extended time limits. Given the attitudes of officials in some communities, having such commitments would constitute definite progress. Delinquent communities that did not make commitments and act to comply could still be sued.

3. What will we gain if we defeat the rule change? We will retain the right to sue now. If we sue or threaten to sue every delinquent community and win, we will probably get court ordered or voluntary schedules for compliance that are very similar to the ones required by the rule change. It will cost money and time. It could, in some instances create animosities that become barriers to other agenda items - access, programs and funding.

4. With massive reductions in federal funding and responsibility, and simultaneous demands for lower taxes at all levels, many local governments are struggling to maintain basic standards of modern civilization for their people. We who have disabilities are engaged in a desperate struggle to preserve the fragile foundations of our participation in the mainstream of culture.

In this context we are continually attacked as litigation happy zealots with no regard for the welfare of others. Given the current political and economic realities, there is much to be said for reaching out positively to our fellow Americans, for visibly communicating our willingness to make common cause to solve common problems. "Yes, we demand full implementation of our civil and human rights in a timely manner. Yes, we understand your problems. Yes, we are going to cooperate for reasonable solutions to your problems and ours. We offer you this special, one time extension. You give us a firm commitment to comply. Everybody wins."

OUR ADVICE. COMMUNICATE WITH THE DEPARTMENT OF JUSTICE. Tell it like it is - what you and your colleagues believe. "It's a bad change, kill it!" "It's not good news, but it's reality. Let it go through." "It could be much better. Here's how." Your positions should be supported by reasoning and, when possible, evidence.

WHETHER YOU ARE FOR OR AGAINST THE RULE CHANGE, IT IS VITAL TO DEMAND THAT no community be allowed an extension of time without making a firm, written commitment to install specific numbers of curb cuts by specific dates certain, and to be completely in compliance by the end of the five or ten year period. It is vital that advocates at the community level vigorously monitor and advocate compliance, and that when negotiations fail, they file complaints with the DOJ and demand that those complaints be pursued. We must make absolutely sure that we do not have today's problems ten years from now.

THERE ARE LEGITIMATE DIFFERENCES OF OPINION on this issue among credible rights advocates. In many ways these apparently opposing views are complementary. There is good reason for all of them to be heard. There is no reason for us to attack each other or our friends in government. United we win. Divided we lose.

ABOVE ALL, LET YOUR VOICE BE HEARD. Silence from our community will send the wrong message to friend and foe: "People with disabilities don't care about their rights."

II. ADA AMENDED - OVER-THE-ROAD BUS DEADLINES EXTENDED. The recently enacted National Highway System Designation Act of 1995, signed by the President on November 28, contained a minor amendment to the ADA (see enclosed). According to the original ADA, Department of Transportation (DOT) regulations for over-the-road buses were to have been issued by July, 1994. Large over-the-road carriers were required to come into compliance by July, 1996, small carriers by July, 1997. Since DOT has not yet issued its regulations, the Congress simply amended the ADA to provide that large and small carriers will have the same two and three years to comply, from whatever date the DOT actually issues its final rules.

BACKGROUND. The controversy about lifts on over-the-road buses was not settled when ADA was signed. We agreed to a study that would determine the best way to provide equal access to bus transport. Using the study, the DOT would write it's regulations. The study occurred and recommended wheel chair access to each new bus. It is hard to imagine how the recommendations of the study could be fully implemented without lifts, but lifts were not specifically required. The study did not clearly resolve the old controversy with the bus companies.

Meanwhile, there was a massive three year campaign of anti-ADA propaganda in the media. There was an explosive political upheaval. Opponents of the ADA took positions of leadership in the House of Representatives, including the Chairmanship of the Committee on Transportation. Norman Mineta, a hero of accessible transportation in the House, retired. The bus lobbies were encouraged to demand regulations that ignored the study and gutted our ADA transportation rights. In the alternative, there was the threat of direct amendments to ADA that accomplished the same purpose. The odds for a just outcome did not look good.

DOT/disability community/bus lobby negotiations became heated, complex and lengthy. The deadline for issuing regulations passed. In response, the Congress enacted the discussed amendment to the ADA.

While delaying the good is by definition bad, it is arguable that delaying the over-the-road bus regulations was the best of several bad choices. Given the delay, the amendment is rational. It is hardly an ideal result, but it does not permanently infringe our rights. Certainly it's a lot better than the regulations or the amendment that the bus lobbies wanted.

BUT WHY ARE WE JUST NOW HEARING ABOUT AN AMENDMENT TO THE ADA - AFTER IT HAS PASSED?

The very capable leadership of our CCD Transportation Task Force was tracking the over-the-road bus issue. They became aware that this amendment had been marked up as part of the highway bill by the House Committee on Transportation. However, they were guaranteed by usually reliable House sources that the Senate would not agree to it, and there was practically no chance it would be in the final highway law. With all of us totally involved in the historic budget bill battle, there was no time or reason to make a big issue of an arguably rational technical amendment that was probably not going to happen. There was no further communication on the subject from our Hill contacts. We first heard about the imminent passage of the amendment as the President was about to sign the Highway Act.

It is obvious that much of the new leadership in Congress does not feel it necessary to include the disability community in the process and that some of our old staff contacts are no longer fully in the loop.

For more information about the amendment call Maureen McCloskey, 202-416-7696.

AND SO WE HAVE ONE AMENDMENT TO ADA, AND ONE PROPOSED CHANGE TO ADA REGULATIONS. Potentially losing battles have been postponed, hopefully to times when we will fight from more favorable political ground. In the context of overcoming thousands of years of discrimination, we have hung in there, we have not agreed to any permanent weakening of our rights.

But we are deeply concerned. Retreat is not advance. Retreat can communicate weakness. Justice delayed is justice denied.

HOW DID RETREAT HAPPEN? We of Justice For All accept our full share of responsibility. However, it is counterproductive to waste energy on assigning blame to members of our community or to our allies in or out of government. The fact is that our infant movement is fighting to hold back a tidal wave of retrogression that is - temporarily at least - overwhelming some of our nation's most mature political forces, from AARP, NOW, Labor and the civil rights community to moderate Republicans, the Democratic Party and the Presidency.

OUR JOB NOW IS NOT TO LOOK FOR SCAPEGOATS OR SAVIORS. It is to focus once again on the eternal truth. Equal rights have never

been handed down by paternalistic authority. Equality is taken and preserved by the oppressed, or it does not occur, it does not survive. We have primary responsibility for our own rights.

OUR JOB NOW is to be super vigilant and aggressively proactive. Leaders of the new politics - in Congress and in many states - have communicated the intention, the will and the means to curtail our most sacred rights and services on a blitzkrieg basis. We need to take immediate steps to ensure that we are at the table when decisions are made, whether by invitation, or simply by kicking down the door of the meeting place. We need to be vigorously, positively active to create new perceptions and new relationships at the national, state and local levels.

OUR JOB NOW is to understand that advocacy as usual is not going to achieve our goals in the coming years. Our job now is to transcend turf, tradition and personality, to unite, to mobilize, to multiply our movement one hundred fold. Our job now is to utilize state-of-the art technology, organization and methodology to communicate our vision into the cultural consciousness, to lead America to an era of science and free enterprise democracy fulfilled in the life of every person.

WHILE WE ARE CORRECTLY CONCERNED with overcoming the growing pains of our infant movement - and our infant democracy - let us also rejoice in our progress. With your dedication, we have recorded three decades of miracles at the cutting edge of human development. In the present David and Goliath struggle, we are not yet winning the war, but we are winning some battles. Every day we are fighting more like winners.

Together we have overcome. Together we shall overcome.

Justin Dart

DEPARTMENT OF JUSTICE
Office of the Attorney General
28 CFR Part 35
[Order No. 1999-95]

Nondiscrimination on the Basis of
Disability in State and Local
Government Services

AGENCY: Department of Justice.
ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Justice regulation implementing Title II of the Americans with Disabilities Act to clarify the requirement for installation of curb ramps at existing pedestrian walkways. The proposal would extend the time period for compliance to January 26, 2000, for curb ramps serving State and local government facilities, transportation, places of public accommodation, other places of employment, and at the residences of individuals with disabilities. It would extend the

time period for providing curb ramps at existing pedestrian walkways in other areas until January 26, 2005, and it would require public entities to include a schedule for the implementation of these requirements in their transition plans.

DATES: To be assured of consideration, comments must be in writing and must be received on or before January 26, 1996. Comments that are received after the closing date will be considered to the extent practicable.

ADDRESSES: Comments on this proposed rule should be sent to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Rulemaking Docker 007, P.O. Box 65485, Washington, DC 20035.

Comments may also be sent to the Civil Rights Division via the Internet. Comments should be addressed to: Comments_ADA@justice.usdoj.gov. If your comment is transmitted in a word processing file, please specify the format. Flat ASCII files are preferred.

Comments submitted to the Department of Justice will be available for inspection in the offices of the Disability Rights Section, 1425 New York Avenue NW., Washington, DC from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays from December 13, 1995, until the Department publishes the rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or magnification devices.

To be included in the record of this rulemaking, comments must include the name and address of the commenter. Commenters who choose to transmit their comments via the Internet should include their name and address in the text of the comment. Electronically transmitted comments that identify the commenter by screen name only will not be included in the record.

FOR FURTHER INFORMATION CONTACT: Janet Blizard, (202)307-0663. The ADA Information Line, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530, (800)514-0301 (voice), (800)514-0383 (TDD). These telephone numbers are toll-free numbers.

United States Senate
Washington, DC 20510

March 24, 1995

The Honorable Janet F. Reno
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Madam Attorney General:

As the principal Senate co-sponsors of the Americans with Disabilities Act ("ADA"), we are writing to request the U.S. Department of Justice extend the time period for installation of curb ramps by public entities under 28 C.F.R. 35.150. We are, of course, strong supporters of ADA and its fundamental principle that access is opportunity for people with disabilities. At the same

time, it was our intent to carefully craft ADA to include fair and balanced provisions and specific safeguards for state and local governments regarding costs.

In this regard, we have heard that curb cuts are a unique, significant capital expense, and believe that our intent would be more properly fulfilled over a longer time period.

Currently, we understand that public entities were required to have completed all necessary curb cuts by January 26, 1995 ("effective date"). We believe there should be separate time periods for at least two classes or tiers of curb cuts, provided public entities have a written transition plan with specific dates for completing all curbs cuts within the extended time period. Tier I curb cuts are ones that serve state and local government offices, transportation, places of public accommodation, other places of employment, other heavily traveled routes, and private homes of persons with disabilities, and should be completed within 5 years of the effective date. Tier II cuts serve residential and other non-commercial areas where pedestrian walkways exist, and a public entity should be given 10 years from the effective date to install necessary curb ramps.

We urge you to consider adopting this policy change as soon as possible, consistent with all laws and ethical guidelines.

Sincerely yours,

TOM HARKIN

BOB DOLE

EDWARD M. KENNEDY

ORRIN G. HATCH

JOHN MCCAIN

CONFERENCE REPORT ON S.440
NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

This provision amends section 306(a)(2)(B)(iii) of the Americans With Disabilities Act (ADA) of 1990 to provide that accessibility requirements for private over-the-road buses must be met by small providers within three years after the issuance of final regulations and with respect to other providers, within two years after the issuance of final regulations.

[...Intervening text...]

The Conference adopts the House provision. Under the Americans With Disabilities Act, DOT was required to issue regulations for over-the-road bus operators by July 1994. Under the ADA, compliance with these regulations is stated as six years after enactment of that Act or by July 1996 for large bus operators and seven years after enactment, or by July 1997, for small bus

operators. However, to date, DOT has not yet issued final regulations under ADA and has no expected date for issuance, forcing over-the-road bus operators into a compliance burden with an unknown set of regulations. To avoid this result, this provision amends the ADA to change compliance dates to two and three years after issuance of final regulations for large and small over-the-road bus operators, respectively.

EXECUTIVE OFFICE OF THE PRESIDENT

27-Dec-1995 11:39am

TO: justice

FROM: owner-justice

SUBJECT: DREDF on ADA Regulations Changes

Dear Colleague:

For your information we enclose the opinion of the Disability Rights Education and Defense Fund (DREDF) on the proposed ADA curb cut rule change. As you know DREDF is one of our most credible advocacy organizations. DREDF leaders like Pat Wright, Arlene Mayerson and Marilyn Golden were instrumental in the creation of the ADA, and have played a leadership role during the period of implementation.

As we receive opinions from other organizations we will be happy to distribute them to the community by E-mail within the limits our capacity. Contact Mark Smith, 601-969-1662, or Fred Fay, Voice 508-371-0992, E-mail: justice@mailbot.com

=====
Disability Rights Education and Defense Fund (DREDF)
2212 - 6th Street
Berkeley, CA 94610
(510) 644-2555
(800) 466-4232
FAX (510) 841-8645
1633 "Q" S.W., Suite 220
Washington, D.C. 20009
(202) 986-0375
FAX (202) 462-5624

Alert! Alert! Alert!

Department of Justice Proposes to Weaken ADA Regulations:

Cities Would Have 5 - 10 Years Longer to Provide Curb Ramps

Your letters are urgently needed by January 26, 1996 expressing your opposition to the federal Department of Justice's (DOJ's) proposed changes to its Americans with Disabilities Act regulation extending the time period for the installation of curb ramps to the year 2000 in commercial areas and the year 2005 in other areas. This proposal need not become a precedent for weakening many other parts of the ADA if our community rallies against the

proposal!

Attached are comments from the Disability Rights Education and Defense Fund (DREDF) to help you write your letters. Don't send in the DREDF comments themselves. Instead, write a letter in your own words. Borrow ideas and arguments from the DREDF comments as much as you wish, adding your own thoughts and experiences or those of people you know. It is especially important to include your own concerns about how your mobility would be affected in specific, detailed ways by the proposal. The attached comments also address other points on which DOJ has specifically requested our input. Send your letters to:

John L. Wodatch
Chief, Disability Rights Section
Civil Rights Division
U.S. Department of Justice
Rulemaking Docket 007
P.O. Box 65485
Washington, D.C. 20035

Comments may also be sent via the Internet. They should be addressed to:

Comments_ADA@justice.usdoj.gov

If your comments are transmitted in a word processing file, specify the format. DOJ prefers flat ASCII files. Include your name and address in the text of the comments.

=====

Disability Rights Education and Defense Fund (DREDF)
Comments on Department of Justice (DOJ) Notice of Proposed
Rulemaking, Americans With Disabilities Act (ADA), published
in the Federal Register on November 27, 1995, pp.
58462-58465

The Current Requirement

DOJ's ADA regulation provides that state and local governments may not deny the benefits of their programs, activities, and services to individuals with disabilities because their facilities are inaccessible. Maintaining public walkways is one such program, so state and local governments must make existing pedestrian walkways accessible by providing curb ramps. Ramps are not necessarily required at every intersection; alternative routes that make use of existing curb ramps may be acceptable in the limited circumstances where individuals with disabilities need only travel a marginally longer route. The deadline for these structural changes was January 26, 1995.

State and local governments are not required to take any action that they can demonstrate would result in a fundamental alteration in the nature of their programs or in

undue financial and administrative burdens. Such a determination must be based on all resources available for use in the program. This determination can only be made by the head of the state or local government or his or her designee, but in any case, a high level official, no lower than a department head, having budgetary authority and responsibility for making spending decisions. The decision must be documented in a written statement of the reasons for reaching that conclusion.

State and local governments with 50 or more employees are required to include in their transition plans (which were required to be developed by July 26, 1992) a schedule for providing curb ramps, giving priority to locations serving facilities covered by the ADA (including government buildings, transportation, bus stops, public accommodations, and employers). The development of transition plans must include an opportunity for interested persons, including individuals with disabilities or organizations representing them, to participate by submitting comments.

In addition to these requirements for providing curb ramps at existing pedestrian walkways, state and local governments are also required to provide curb ramps at newly constructed and altered streets, roads, highways, and street-level pedestrian walkways.

What DOJ Is Proposing

Citing the "unique, significant capital expense" of providing curb ramps, Senators Bob Dole, Tom Harkin, Orrin Hatch, Edward Kennedy, and John McCain wrote a letter asking the Department of Justice to amend its regulation to provide additional time for state and local governments to meet their obligation to provide curb ramps. DOJ states that it considers the suggested extension a reasonable and appropriate modification.

DOJ proposes to change the deadline for providing curb ramps at existing pedestrian walkways. The time period would be extended to January 26, 2000 (5 additional years) for curb ramps serving state and local government facilities, transportation, public accommodations, other places of employment, and the residences of people with disabilities. The time period would be extended to January 26, 2005 (10 additional years) for curb ramps serving other locations. State and local governments would be required to include a specific schedule for implementing these requirements in their transition plans. DOJ states that, after January 26, 2000, if a state or local government receives a request from an individual with a disability for a curb ramp serving that individual's residence, responding to that request should take precedence over the installation of other curb ramps serving residential or non-commercial areas.

DOJ's proposal only changes the current state and local government requirement to provide curb ramps at existing pedestrian walkways. The proposal does not affect the current

requirement to provide curb ramps in newly constructed and altered locations.

The Disability Community Strongly Opposes This Proposal!

The disability community objects strongly to this proposal because curb ramps are an urgent need in many communities across the country, and the ADA regulations as they stand today have been carefully crafted to provide adequate flexibility already to state and local governments which find they are too short on funds to have completed all the required ramps. The very purpose of the "undue financial and administrative burden" provision is to give the needed flexibility to cities and towns that need more time or legitimately don't have the funds. State and local governments which have tried in good faith to comply with the ADA should not be afraid to utilize the ADA's undue burden provision.

The disability community agrees with the concerns DOJ has heard about the possible effect of this proposal on transportation systems. The longer bus stops remain inaccessible due to the lack of curb ramps, the longer these systems will remain unusable to many disabled individuals, and the longer transit agencies must bear the great expense of providing paratransit to people with disabilities who might otherwise use fixed route bus systems. This is another reason DOJ's proposal should not be implemented.

If DOJ still chooses to extend the curb ramp time requirement, it should do so in a much stronger manner than is reflected in the current proposal, which really undermines the rights of people with disabilities by allowing a simple, lengthy extension with no assurance that, even after the passage of 5 or 10 more years, compliance will be achieved. If DOJ allows a time extension, it should require any city which makes use of the extension to establish an implementation schedule which is not only specific but which provides measurable, proportional progress toward full compliance during each year. If milestones are not reached, cities should be required to amend their transition plans stating why. Any extended transition plans should be subject to federal oversight, perhaps from the Department of Transportation, given DOT's existing role with streets and highways. If DOJ's lax proposal is not strengthened in this way, it is easy to foresee how most cities would use it to postpone for another ten years any compliance efforts at all. Will another extension be granted at that point, and another, and another? Such rule changes can easily aid the many cities which have not tried in good faith to use the funds they do have to attain ADA compliance.

In addition, if DOJ allows an extension, it should make clear that any state or local government which makes use of it must provide all required curb ramps by that time. Such a government entity should have a very difficult standard to meet in any claim of undue financial or administrative burdens in order to be relieved of the responsibility to provide all their required ramps.

One Final Issue - Curb Ramps at Residences

DOJ raises one final question in its proposal. DOJ states that it received the suggestion that it should require state and local governments to establish a formal process through which individuals with disabilities could request the installation of curb ramps serving their residences. DOJ further states that it also received the suggestion that it should require such residential ramps to be provided within one year of the request. DOJ's proposal, however, doesn't include these suggested provisions. In explaining why, DOJ states its concern that, given the limitations on available public funds, the imposition of a requirement to provide these ramps within a year of the request may inhibit the ability of the state or local government to give priority to installing curb ramps on more heavily traveled routes serving public and commercial facilities. DOJ seeks comment on whether the installation of curb ramps at private residences should be given priority over their installation in public and commercial areas.

The disability community shares DOJ's concern that individual requests for residential curb ramps could inhibit the ability of municipal governments to provide curb ramps in commercial areas. We urge DOJ not to require curb ramps at private residences to have priority over their installation in public and commercial areas. Both the current requirement and the proposal already mandate local input by people with disabilities to state and local governments, which can fine-tune the ranking of curb ramp priorities as the local community wishes.

Submitted for DREDF by mgolden@tsbbs02.tnet.com (Marilyn Golden)