**Title: Evaluation of Barrier Removal Costs Associated with 2004 Americans with Disabilities Act (ADA) Accessibility Guidelines**

Description:

The U.S. Department of Justice (DOJ) is considering amendments to the requirements for businesses to remove physical barriers under the Americans with Disabilities Act (ADA). In 2004 the Architectural and Transportation Barriers Compliance Board (Access Board) submitted recommendations to the DOJ for revised ADA accessibility guidelines (ADAAG). The 2004 ADAAG made recommendations for significant changes to the ADAAG that were adopted in 1992. In 1992 many small business owners commented that the accessibility requirements were unduly burdensome because small businesses had virtually the same requirements as large businesses, although large firms were able to spread the significant fixed costs of compliance over greater sales volumes.

Disparities in regulatory compliance costs between large and small firms are relatively common. A 2005 Office of Advocacy study concluded that small businesses paid nearly 1.5 times as much per employee as large firms to comply with regulations (Crain, 2005). In industries such as manufacturing, and for certain subsets of regulations, such as environmental rules, cost disparities can be many times greater. This report examines the costs of complying with the architectural barrier removal requirements set out in the 2004 ADAAG and forthcoming in DOJ's interpretation. Separate costs for small firm buildings and large firm buildings are developed to examine the magnitude of small firm costs, and whether small firms are expected to face disproportionately higher costs.

Purpose/Objective:

The Americans with Disabilities Act (ADA) regulations went into effect in 1992. The ADA (42 U.S.C. 12186) requires the Architectural and Transportation Barriers Compliance Board (Access Board)4 to "issue minimum guidelines" for accessibility. In 2004 the Access Board issued a revised set of standards, the 2004 ADA Accessibility Guidelines (2004 ADAAG), that would significantly change many of the accessibility standards for private sector businesses under Title III of the Act (69 FR 44084, 2004). In 2004, the U.S. Department of Justice (DOJ) issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on the 2004 ADAAG, while stating that "it anticipates proposing the revised ADA Standards for new construction and alterations that are consistent with the 2004 ADAAG" (69 FR 58768, 2004 at pg. 58771). The DOJ also noted that it has the sole authority for implementing the Title III requirement that public accommodations eliminate existing architectural barriers where it is readily achievable to do so.

In response to the ANPRM, small businesses commented upon the potential burden of the 2004 ADAAG requirements. The Office of Advocacy summarized many of small businesses' concerns in Advocacy comments on the ANPRM (Sullivan, 2005). Small firms are most concerned with the requirement in Title III to perform "architectural barrier removal" from existing structures when such activity is "readily achievable." The ADA defines "readily achievable" as "easily accomplishable and able to be carried out without much difficulty or expense" (42 U.S.C. 12181(9). The "readily achievable standard" is "determined on a case-by-case basis in light of the particular circumstances" of each business, such as the financial resources of the entity (DOJ, 1993a). Small businesses have commented that the vagueness in the "readily achievable standard" is both difficult and expensive to follow, because of the DOJ's lack of useful guidance on what constitutes a barrier and what kind of barrier removal is readily achievable. This report examines the costs of ten new/revised barrier removal requirement elements in the 2004 ADAAG. It is important to note that the DOJ may choose not to require some of these requirements in its forthcoming proposed rulemaking.

**OMB Category: Influential**

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**Comments:**

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1. There is no standard definition of "size." Many studies involving firm size focus on revenue. Some use capitalization. Some use number of employees. In most cases, the choice of measure is often a matter of choosing the lesser evil. Your paper uses revenue. As the issue you are addressing is the regulatory burden, it may be more meaningful to define size by net income rather than by revenue. To the extent that net income and revenue are correlated, you won't find much of a difference. However, I would question whether there might be a sampling bias. For example, if it is the case (I don't know that it is or is not) that firms that deal with the public tend to have lower profit margins than firms that do not deal with the public, then one would expect that the definition "size = revenue" would tend to bias firms in your sample toward the "large" side of the scale while the definition "size = net income" would tend to bias firms toward the "small" side of the scale.

   I'm not suggesting that what you have here is incorrect. Rather, I'm warning that the skeptical reader is naturally going to ask how your results would change if you employed a different definition of size.

2. I would assume that small businesses are less likely to take advantage of tax credits for barrier removal than are large businesses. To the extent that this is true, it is likely due to three factors: (1) small businesses are more likely to operate on a cash basis, (2) small businesses are less likely to show a profit and so be less able to avail themselves of tax credits, (3) small businesses are less likely to avail themselves of tax professionals who would be aware of this portion of the tax code. Thus, it is likely that the tax credits actually increase the burden on small firms relative to the burden on large firms.

3. At the start of the paper, there is a tantalizing reference to the indirect burden on small businesses due to their becoming targets of frivolous lawsuits. I understand that it is outside the scope of this paper, but it would have been nice to see an estimate of that number.

4. I understand that you are writing for a specific audience, so the following may not be relevant. If this were headed for an academic journal, I'd ask for graphs to illustrate the numbers in the tables. I find it more difficult to glean the conclusion from looking at tables of numbers than I do from looking at charts and graphs.

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