

Please Note: Updated Information

On May 21, 2012, the Department extended the compliance date for sections 242 and 1009 of the 2010 ADA Standards for Accessible Design, as they relate to the provision of accessible entry and exit to existing (built before March 15, 2012) swimming pools, wading pools, and spas. These provisions for existing pools for title II entities will now take effect on January 31, 2013. This extension does NOT apply to the March 15, 2012 effective date for newly constructed or altered pools.

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Please Note: Updated Information

On May 24, 2012, the Department of Justice announced that, as a matter of prosecutorial discretion, it will not enforce the fixed element requirements of the 2010 ADA Standards for Accessible Design against those owners or operators of existing pools who purchased, prior to March 15, 2012, portable lifts that otherwise comply with the 2010 Standards, so long as the lifts are in position for use at the pool and operational during all times that the pool is open to guests. Generally, lifts purchased after March 15, 2012 must be fixed if it is readily achievable to do so.



**Accessible Pools :
Means of Entry and Exit
Title III – Existing Pools**

United States Department of Justice
Civil Rights Division
Recorded on May 2, 2012

I own or operate a business that has a pool. Do the ADA's requirements for existing pools apply to me?

Title III applies to places of public accommodation, which include many private businesses. 28 CFR 36.104 (definition of "place of public accommodation")

If a pool is provided at a place that does not qualify as a public accommodation, then the pool does not have to comply with the title III accessibility requirements, including those for pools.

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Are places of lodging covered?

Places of Lodging:

- Inn, hotel, or motel, or other place of lodging. ... (E) xcept for an establishment located within a facility that contains not more than five rooms for rent or hire and that actually is occupied by the proprietor of the establishment as the residence of the proprietor. 28 CFR 36.104 (definition of "place of lodging").
- An "other place of lodging" is a facility that provides guest rooms primarily for short-term rentals (generally 30 days or less), and under conditions and with amenities similar to a hotel, motel, or inn. 28 CFR 36.104 (definition of "place of lodging").

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Are places of lodging covered? cont'd

- A individually owned timeshare or condominium that does not meet the definition of place of lodging is not required to comply with title III of the ADA.

For example, a person rents out his condo at the beach through a realtor. This does not mean that the pool available to the residents of his private residential community has become a public accommodation.

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Other Examples of Places of Public Accommodations Likely to have Pools

- Waterparks
- Health Clubs or Recreation Centers
- Campgrounds
- RV Parks
- Private Schools or Universities
- Community neighborhood pools that are open to the public some or all of the time through, for example, membership sales, swim competitions, or public swim classes

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What about a pool in a private residential community? Does it have to comply with the ADA's pool access requirements?

Community pools or clubs that are associated with a private residential community and are limited to the exclusive use of residents and their guests are not covered by the ADA.

On the other hand, if a swimming pool/club located in a residential community is made available to the public for rental or use, it is covered under title III of the ADA, including its accessibility requirements.

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Pool Requirements in 2010 Standards

The 2010 Standards provide the benchmark for accessibility in existing pools and include the following requirements for provision of accessible means of entry into pools:

- ❖ **Large pools (300 linear feet or more):**
 - Must have two accessible means of entry and exit.
 - One must be either a fixed pool lift or a sloped entry.
 - The other may be a sloped entry, fixed lift, transfer wall, transfer system, or pool stairs.
- ❖ **Small pools (less than 300 linear feet):**
 - Must have one accessible means of entry and exit.
 - Must be either a fixed pool lift or sloped entry.
- ❖ **Lift** - Must comply with the technical requirements in the 2010 Standards including independent operation, location, size of seat, lifting capacity (weight) and clear floor space. (Section 1009.2 of the 2010 Standards)
- ❖ **Sloped Entry** - Must comply with the technical requirements in the 2010 Standards. (Section 1009.3 of the 2010 Standards)

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What is the difference between a non-fixed lift and a fixed lift?

- Non-fixed lift: lift not physically attached to the deck or apron in any way. A non-fixed lift is often called a portable lift.
- Fixed lift: lift is physically attached to the pool deck or apron in some way.
Fixed lifts does not mean permanently attached. The lift may be removable.
- A “portable” lift that is attached to the pool deck would be considered a fixed lift.

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What are my obligations for my pool that was built before the 2010 Standards took effect?

Public accommodations must make their existing pools accessible, but only to the extent it is “readily achievable.”

If an action is not readily achievable, it is not required.

Readily achievable means that providing access is easily accomplished without much difficulty or expense.

The readily achievable barrier removal analysis (as set forth by Congress in the 1990 Statute and the Department’s 1991 regulation) is not new. Public accommodations have successfully used this exact same analysis to remove barriers in existing facilities for more than 20 years.

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How Do I Decide if it is Readily Achievable?

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Readily Achievable Factors

- The nature and cost of the action needed;
- Financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

Cont'd...

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Readily Achievable Factors (cont'd)

- If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

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Which lifts can be used and under what circumstances?

- If it is readily achievable to install a fixed lift that complies with the 2010 Standards, it must be installed. The fixed lift may include a “portable” or movable lift that otherwise complies with the 2010 Standards and has been attached to the pool deck.
- If it is not readily achievable to install a fixed lift, a non-fixed lift that otherwise complies with the 2010 Standards can be used.
- If a non-fixed lift has already been purchased, it should be attached to the pool deck if readily achievable.
- If even providing a non-fixed lift is not readily achievable, no lift is required, depending on the circumstances, some other means of accessible entry may be required, if it is readily achievable.

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Will I have to close my pool or spa if it's not readily achievable to comply?

Closing a pool or spa will never be required if it is not readily achievable to comply with the requirements regardless of the reason that it is not readily achievable.

If a lift has been ordered or is on backorder, the pool does not have to close until such time as the lift becomes available. However, once the lift is available, the pool owner must take steps to install it as soon as possible.

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Common Concerns

- Modifying the pool wall/structure
- Slope issues
- Deck size
- Raised curbs
- Wading (baby) pools
- Small spas
- Other: therapy pools and deep pools

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Modifying the pool wall/structure

I can't meet the Standards without breaking the wall and concrete around my old pool. What do I do?

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Slope Issues

My pool deck area, where I would have to attach the lift, has a slope that is too great to comply with the 2010 Standards. Do we need to change the deck slope now or can this wait until the deck is replaced or the pool is renovated?

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Deck Space

I'm concerned that if I install a pool lift there will not be enough room on the deck for my guests to enjoy the pool. Do I still need to install one?

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Raised Curb

I have a large pool that has 6-8 inch curb around the perimeter of the pool. Currently there is no pool lift on the market that can provide access to this pool because it would have to raise the seat over the height of the curb and extend over the length and depth of the curb and gutter ledge. What are my options?

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Wading (Baby) Pools

Our facility has a swimming pool and a two-foot deep baby pool. We are installing a lift in the main pool. Do I have to do anything to my baby pool?

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Small Spas

I have a small spa. I can't find a lift that works with it. What do I do?

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Therapy Pools

We have a therapy pool in our rehabilitation center. Do we have to provide an accessible means of entry and exit?

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Deep Pools

Our recreation center has a deep pool with a minimum depth of 60 inches. What are we required to do to provide access?

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Sharing Lifts

I have more than one pool. Can I share one portable lift between the pools?

Each existing pool must have its own lift if it is readily achievable to do so. However, before a public accommodation can consider sharing a portable lift between pools to meet its barrier removal obligations, it would be required to determine:

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Sharing Lifts – Cont'd

- that it is not readily achievable to install a fixed pool lift at each of its pools (including a portable lift that has been attached to the pool deck or apron) or sloped means of entry;
- that it is not readily achievable to provide a portable (non-fixed) pool lift at each of its pools; and
- that it is not readily achievable to provide another accessible means of entry to each pool, such as a transfer wall or pool steps.

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Sharing Lifts – Cont'd

Sharing non-fixed pool lifts between pools poses significant safety risks to swimmers with disabilities. If a lift has been moved to another pool, a person with disability might be unable to get out of the pool.

Sharing lifts between pools also requires people with disabilities to rely on staff assistance to find, move, and set up the lift each time.

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I've provided a lift, do I need to do anything else?

- If you've provided a lift or other accessible means of entry to your pool, it needs to be maintained so that it is available and in working condition when the pool is open.
- Understand the type and frequency of maintenance that your particular type of equipment requires.
- Certain types of equipment may require more staff support and maintenance than others (e.g. ensuring there are enough batteries for a pool lift to maintain a continued charge during pool hours).
- Entities should plan for these issues and modify operational policies as needed to provide accessible means of entry while the pool is open.

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I've provided a lift, do I need to do anything else?

Ongoing staff training is essential to ensure that pool facilities (particularly pool lifts) are available whenever a pool is open. Staff should know:

- How to respond to requests or questions from individuals with disabilities;
- What accessible features or equipment are available;
- Where they are located;
- How to properly and safely set up and operate the accessible equipment; and
- How and when to perform maintenance.

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If I am allowed to use a non-fixed lift, can I store the lift and bring it out only when it is requested by a person with a disability?

- No. A pool lift must remain in place and be operational during all times that the pool is open to guests.
- Allowing covered entities to store lifts and only take them out on request places unnecessary additional burdens on people with disabilities.

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Can I store my lift? Cont'd

- Portable accessibility features can pose many challenges – e.g., unavailability of staff, missing equipment, or lack of knowledge on how to set it up.
- In addition, a compliant lift must be located:
 - At the proper water depth
 - With necessary space around it for maneuvering
- Moving lift makes it more likely that lift will be placed incorrectly, making it difficult or dangerous to use.

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Do I have to leave my pool lift out at poolside when my pool is closed?

- No. Accessible features are only required to be available when the facility is open and available to the public. If a pool is closed during the winter months or at night, the public accommodation is free to remove the lift from the pool and store it.

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I think a lift poses a safety risk at an unattended pool. I also have heard that my insurance rates will increase if I have a lift in my unattended pool.

The ADA allows businesses to consider “legitimate safety requirements” in determining whether an action is readily achievable, as long as the requirements are based on actual risks and are necessary for the safe operation of the business. However, speculation or unsubstantiated generalizations about safety concerns or risks cannot be the basis of a legitimate safety requirement. 28 CFR 36.104 (definition of readily achievable). Additionally, businesses cannot rely on limitations on insurance rates as a reason not to comply with the ADA. 28 CFR 36.212(c).

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What is the Department's approach going to be to ensuring compliance with the new regulation pertaining to pool lifts in existing pools?

As a general matter, the Department strongly prefers to secure voluntary compliance with the ADA from covered entities. To achieve this objective, the Department has a robust outreach and technical assistance program designed to assist businesses and State and local governments to understand their obligations under the ADA.

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Tax Credits and Deductions Available to Assist Businesses

Title III entities may be able to take advantage of federal tax credits or deduction

Tax Credit (Section 44 of the IRS Code):

- Small businesses with total revenues of \$1,000,000 or less in previous tax year OR 30 or fewer full-time employees.
- May be used to offset costs of undertaking barrier removal and alterations to improve accessibility, providing effective communication for customers and employees, and purchasing certain adaptive equipment.

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Tax Credits and Deductions Available to Assist Businesses

Tax Deduction (Section 190 of the IRS Code):

- Available to businesses of any size.
- May be used to offset costs of barrier removal and alterations

For more information, see the IRS website www.irs.gov

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**For more information about the ADA, please visit our website
or call our toll-free number.**

ADA Website: www.ADA.gov

**ADA Information Line
800-514-0301 (Voice) and
800-514-0383 (TTY)
24 hours a day to order
publications by mail.**

**M-W, F 9:30 a.m. – 5:30 p.m.,
Thurs 12:30 p.m. – 5:30 p.m. (Eastern Time)
to speak with an ADA Specialist.
All calls are confidential.**

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