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Disability Rights Section  
Civil Rights Division  
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**Comments on the 2010 Advance Notice of Proposed Rulemaking on web accessibility (“Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture”). 28 C.F.R. Parts 35 and 36; CRT Docket No. 113; AG Order No. RIN 1190-AA64**

The National Association of the Deaf (NAD) submits these comments in response to the Advance Notice of Proposed Rulemaking (“ANPRM”), RIN 1190-AA64 (Equipment and Furniture) released by the U.S. Department of Justice (“DOJ”) to amend regulations implementing Titles II and III of the Americans with Disabilities Act (“ADA”).

Established in 1880, the National Association of the Deaf (“NAD”) is the nation's oldest and largest consumer-based national advocacy organization safeguarding the civil and accessibility rights of deaf and hard of hearing individuals in the United States of America. The advocacy scope of the NAD is broad, covering the breadth of all lifetime and impacting future generations in the areas of early intervention, education, employment, health care, technology, telecommunications, youth leadership and more. For more information, please visit [www.nad.org](http://www.nad.org).

The NAD commends the Department of Justice for recognizing the need to ensure that deaf and hard of hearing individuals are equally able to use equipment and furniture

provided by public entities and places of public accommodations by considering new regulations regarding such equipment and furniture. We also appreciate the opportunity to submit comments on the Department's proposed rules.

For several covered ADA entities, their services would not be possible without particular pieces of equipment and/or furniture. Indeed, whether a person with disability is able to access a service, activity or program of a public entity or a place of public accommodation often depends on whether the person can access specific equipment or furniture provided by the entity. This is especially true for deaf and hard of hearing individuals, who face discrimination in today's technical world regarding access to pieces of equipment.

With the advancement of technology, pieces equipment can be highly sophisticated, completed with bells and whistles. Such bells and whistles often include audio features. For example, today's exercise equipment often do more than just aid in someone's cardiovascular activity, it also provides a leisure service in the form of an individual TV with sounds. In the medical context, certain pieces of equipment provide audible warning in case of error that requires human intervention. To illustrate, infusion pumps may have alarms when there's a possible error in the dose. Such alarms would go unnoticed by a deaf or hard of hearing person, which may lead to serious health consequences.

Several pieces of equipment designed to save time in today's busy world require the ability to hear and speak, such as drive-through machines at fast-food restaurants. Deaf and hard of hearing individuals are barred from such equipment and hence are

forced to spend twice as much time on the activity of ordering food based on their lack of options.

Additionally, while technology has benefitted the deaf and hard of hearing community, covered entities have not always ensured such technology allows for effective communication. Today's deaf or hard of hearing person may be more likely to use newer technology – e.g. videophone or text – rather than a TTY as means of contacting a person s/he is not currently in the same location with. On the other hand, a significant number of deaf and hard of hearing people still use TTYs. Accessible sleeping facilities, such as accessible hospital rooms, nursing home facilities, guest or sleeping rooms, continue to provide TTYs as an auxiliary aid to the telephone, but not newer technology. As TTYs become less used, the Department must be sure that its regulations call for the inclusion of current and popular communication technology, while making sure TTYs remain one of the options for the segment of the deaf and hard of hearing population that continue to use them.

It is crucial for the Department to update its regulations to account for the latest technological advancement in equipment to ensure that deaf and hard of hearing individuals are not being left behind. At the same time, it is necessary to provide room in the regulations to include future advancement that is not available today. The regulations, in addition to establishing a benchmark of accessibility, also performs as an educational tool for covered entities to aid them in providing access to pieces of equipment they provide for their services.

Each question presented by the Department appears first in *italicized print*, followed by our response. Some questions may be grouped together to avoid repetition.

### **COMMENTS ON QUESTIONS 1, 6-8, 11-13, 18-24**

*Question 1. The Department is considering adopting the Access Board's standards for medical diagnostic equipment. What other types of medical equipment and furniture should the Department include in its proposed regulation? What modifications to other types of medical equipment and furniture, including equipment and furniture used for treatment or other non-diagnostic purposes, such as hospital beds, should be included in the Department's proposed regulations?*

The Access Board is currently revising its standards for medical diagnostic equipment.<sup>1</sup> The NAD applauds the Access Board and the Department of Justice for considering these important issues.

The NAD urges the Department to consider all types of equipment used in medical facilities, not just diagnostic equipment, when promulgating their new regulations. In particular, the NAD is concerned with adequate communication for individuals who are deaf and hard of hearing in medical settings. The NAD urges the Department, wherever possible, to require medical equipment that conveys information in an aural format (e.g. alarms, beeps, whistles, voice commands) also display that same information in visual format (flashing lights, print displays, captions).

For instance, infusion pumps often come equipped with audible warnings, such as alarms, to notify the user of potential errors in dosage. Such warning would go unheeded by a deaf or hard of hearing user. If they are not notified, they may receive too little or too much of the fluid or medicine. This may lead to serious health consequences. Such pumps must be accompanied with a visual warning in addition to an audible warning. See Question 6.

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<sup>1</sup> <http://www.access-board.gov/medical-equipment.htm> (last visited January 14, 2011).

The NAD also urges the Department to require hospital facilities to make their intercom, phones, and call-buttons fully accessible to individuals who are deaf and hard of hearing so that individuals who are deaf and hard of hearing may call for help, or remain informed of what is happening in the medical setting. See Question 19 for further discussion on effective communication in accessible sleeping facilities, including medical facilities.

*Question 6. What technologies are currently available to increase the accessibility of infusion pumps? What types of infusion pumps are partially or fully operated by patients in the normal course of treatment?*

Infusion pumps often come equipped with audible warnings, such as alarms, to notify the user of potential errors in dosage. Such warning would go unheeded by a deaf or hard of hearing user. If they are not notified, they may receive too little or too much of the fluid or medicine. This may lead to serious health consequences. Such pumps must be accompanied with a visual warning in addition to an audible warning.

The NAD urges the Department to require infusion pumps to have an easy to read, visual display, as well as clearly printed directions on how to use such a pump. Any alarms, alerts, or other noises that alert a patient using an infusion pump should be accessible in a comparable visual format, through blinking lights or visual displays.

*Question 7. What are the greatest difficulties facing individuals with disabilities in accessing rehabilitative and exercise equipment and furniture in a therapeutic setting? What equipment and furniture most effectively permits accessibility for different types of rehabilitative needs? Can different types of equipment meet different access needs of, for example, people with low vision who need access to visual displays on equipment? Are there differences between exercise equipment in therapeutic settings and exercise equipment in non-therapeutic settings (e.g., gym or fitness center)? What exercise equipment or machines are available to meet the needs of individuals with mobility impairments?*

See answer to Question 13 for specifics on what makes exercise and rehabilitative equipment fully accessible to individuals who are deaf and hard of hearing. The NAD encourages the Department to require all equipment available in rehabilitative settings be made accessible to individuals who are deaf and hard of hearing. Aside from visual displays on exercise equipment and weight lifting machines, in a rehabilitative setting, any aural information conveyed through alarms, beeping equipment, or voice commands should be made available in a visual format. This means display screens, captions where necessary, clear visual displays, pictures, and flashing alarm bells and lights. The NAD believes all equipment in both rehabilitative settings and exercise facilities should be made accessible to individuals who are deaf and hard of hearing.

*Question 8. What types of ancillary equipment are most effective in different types of medical or dental examination or treatment settings?*

In particular, equipment that uses clear visual displays, has clear printed instructions, displays any alarms/beeps/alerts in a visual format (flashing alarms or alerts), has captions, and makes aural information available in a comparable visual format is especially important to individuals who are deaf and hard of hearing in a medical setting.

*Question 11. How could medical providers time replacement or modification of equipment and furniture to ensure that individuals with disabilities receive equal access to healthcare without undue delay? What types of triggering events are appropriate for different types of medical equipment and furniture? Should the Department require the purchase rather than the replacement of some accessible equipment and furniture at a certain point? Should the replacement of inaccessible medical equipment or furniture be triggered only by the end of the useful life of the equipment or furniture?*

Adequate medical care is not a luxury, it is a critical component to everyone's well-being, and in emergency settings can mean the difference between life and death. Individuals with disabilities, including those who are deaf and hard of hearing, need

access to functional equipment now. People with disabilities should not have to wait until inaccessible equipment is worn out, or until a medical facility deems it appropriate to purchase accessible equipment. Often times, the need for medical equipment does not come with much time notice. Medical providers, given the time and health sensitivity inherent in their profession, cannot wait until the need of accessible equipment and furniture to arise. They need to be prepared in advance in order to be accessible to patients with disabilities.

*Question 12. What types of accessible exercise equipment and furniture are available on the commercial market? What types of equipment and furniture are already accessible to individuals with disabilities? Is independently operable equipment and furniture available for individuals who are blind or who have low vision, or who have manual dexterity issues.*

Most exercise equipment manufactured today can be made accessible to individuals who are deaf and hard of hearing through clear visual displays. See answer to Question 13 for a more in-depth analysis.

*Question 13. Should the Department require covered entities to provide accessible exercise equipment and furniture? How much of each type of equipment and furniture should be provided? Should the requirements for accessible equipment and furniture be the same for small and large exercise facilities, and if not, how should they differ?*

Health clubs and gyms are all public accommodations, as are private physical therapy clinics and rehabilitative settings, covered by Title III of the ADA. 42 U.S.C § 12181 (7)(L). Likewise, exercise equipment and furniture provided by public entities constitute as an activity, service or program under Title II of the ADA. 42 U.S.C § 12132. The very service of such entities is to provide a site where people can exercise. In order to be able to exercise, people have the option of using a variety of equipment at the covered entity's facility. If a particular piece of equipment is inaccessible to a person with a disability, then the person is being denied equal access and full enjoyment of the

service offered by the covered entity. In order to ensure access, the Department should require that all equipment in these facilities be made accessible to individuals who are deaf and hard of hearing.

To effectively use exercise and rehabilitation equipment, individuals who are deaf and hard of hearing need all displays on equipment (such as calorie counters, timing devices on cardio equipment, or displays on weight lifting machines) to be made available in a clear, visual format. Any information that is conveyed in an aural format (alarm bells, whistles, voice commands) should be made available in a comparable visual format (flashing alarms, printed displays, captioning). Individuals who are deaf and hard of hearing should be able to use all the equipment available in an exercise facility or setting, they should not have to choose from one or two devices that have visual displays.

Of special notice is the increasing number of exercise machines that come equipped with video capacities. Such video capacities – either when showing pre-programmed exercise guidance or when showing a tape, DVD, blue-ray, or live TV – must be equipped with a caption function. Providing a form of entertainment to enhance the exercise experience is a service offered by a covered entity when they offer such equipment, and they must make the service equally accessible for deaf and hard of hearing exercisers.

In addition, the NAD urges the Department to require facilities to conduct inspections and monitor their equipment to ensure that the visual technology available on these machines stays up-to-date and functional.

See Questions 22 and 23 for comments on large versus small entities, and a discussion of undue burden.



*Question 18. What are the challenges posed by the inaccessibility of EIT, including EIT kiosks, POS devices, and ITMs? Are there issues regarding other uses of EIT that the Department should consider adopting to ensure that EIT equipment is accessible?*

Electronic Information Technology is now widely used in interactive kiosks (interactive computer terminals, ticketing & airline check-in, Internet access, movie ticket sales and DVD rental, security screening, bill paying etc); Interactive Transaction Machines/Point of Service Devices (ITM/POS devices) (including retail store self-check out stations, ordering food at fast-food restaurants, gas station pay at pump and other similar devices), and Automated Teller Machines (ATMs). As the Department notes, the use of kiosks, ITM/POS devices, and ATMs are on the rise in many places, including, but not limited to, college campuses, retail establishments, restaurants, movie theaters, and airports. Similarly, such kiosks are appearing in places of employment as well.

As EIT becomes more prevalent, it replaces human staff (as, for example, automatic parking payment machines are replacing parking attendants), leaving people with disabilities without access to flexible, on-demand, individualized assistance. Inaccessibility forces people with disabilities to give up their independence and, often, their private financial, health, or other personal information, to strangers in order to interact with machines. It is, therefore, imperative that EIT be as universally accessible, as consistent from device to device, as flexible/accommodating to the user, and as simple to understand as possible.

Generally, the challenges posed by inaccessible EIT, including EIT kiosks, POS devices, and ITMs, vary depending on the type of technology, the intended purpose of the technology, the environment of use. Accessibility standards governing EIT need to be

specific enough to provide consistency and performance-based enough to allow flexibility to accommodate emerging technology.

To effectively access interactive kiosks, ITM/POS devices, and ATMs, individuals who are deaf and hard of hearing may need all information to be available in a visual format. Any instructions that are given by a voice prompt, or any alarms, beeps, or other sounds need to be made available in a comparable visual format. The NAD requests that the Department mandate that Interactive Kiosks, ITM/POS devices, and ATMs that use aural information, alarms or prompts, be required to make that information available in a comparable visual format, through clear text, writing, pictures, or flashing alarms and signals.

Other deaf or hard of hearing individuals may require the ability to change volume control or have the kiosk account for possible hearing aid interference.

*Question 19. What types of EIT would permit individuals with communication disabilities to most effectively communicate from an accessible hospital room, nursing home facility, guest or sleeping room? Should the Department regulate effective communication from such facilities? What are the costs associated with various types of EIT in such settings?*

First, the NAD urges the Department to update its regulations to account for current technology to ensure the auxiliary aids and services provided by covered entities provide effective communication for deaf and hard of hearing people.

Technological progress has given the deaf and hard of hearing much improved pieces of equipment that enable more effective methods of communication. For example, video phones, web cameras and text-messaging software, rather than TTYs, provide more immediate and efficient communication between a deaf or hard of hearing individual and a hearing individual not in the same room for a good number of deaf and hard of hearing people. In fact, a significant portion of the deaf and hard of hearing community has

stopped using a TTY and even stopping owning one. Instead, they rely on the newer technologies mentioned above.

However, while TTYs are being less used, a significant amount of deaf and hard of hearing people continues to use TTYs as their main telecommunication device. This segment of the community cannot be ignored. The Department must ensure that newer technology supplement, and not replace, TTYs.

So-called accessible sleeping facilities continue to provide TTYs as an auxiliary aid to the telephone, but fail to provide newer technology for the deaf and hard of hearing people who no longer use TTYs. Hence, when sleeping facilities provide a telephone as a service, it must provide an auxiliary aid that provides equivalent service – which means both a TTY and a video phone or a computer with instant messaging capability.

Second, the NAD urges the Department to ensure that deaf and hard of hearing individuals are able to communicate within the facility where the sleeping room is. Such requirements may vary depending on the setting, as presented below:

- From a hospital bed or gurney: Alarm or alert buttons that permit an individual who is deaf or hard of hearing to call for help when necessary. Any telephones/intercoms used to call for help should be accessible for an individual who is deaf and hard of hearing through a text display, an alarm call button, or some type of visual display. Any displays or alarms (such as fire alarms) should be accessible in a clear, easy-to-understand visual format.
- From a guest or sleeping room: In addition to current accessible telecommunication technology, accessible hotel rooms should have

vibrating alarm clocks, flashing doorbells, clearly marked safety escape routes, and visual alarms and displays. For such visual alarms, it is important that emergency alarms are connected to facility's central system.

Based on the experience of our consumers, it is apparent that covered entities are slow to provide the appropriate auxiliary aids and services that'd be contemporarily effective. Given how rapidly technology advances, in particular telecommunication technology, it is imperative that the Department regulates effective communication from sleeping facilities. Not to do so would cause uncertainty and cause more deaf and hard of hearing people to be excluded from the full scope of benefits of services provided by covered entities. For example, if a telephone is provided in a sleeping room, this is a form of service of telecommunication afforded to hearing people by the covered entity. To not provide an auxiliary aid or service to allow a deaf or hard of hearing person is to not afford him/her the full access to all the services offered by the entity.

The actual costs of such auxiliary aids and services should not be relevant to the Department's decision whether to regulate or not. As the ADA and its regulations already provide, there is the affirmative defense of undue burden available to covered entities who are able to prove such defense. More analysis on undue burden is presented in Questions 22 and 23.

*Question 20. What are appropriate scoping criteria for the availability of accessible EIT and triggering events for the replacement or refurbishing of EIT devices, including kiosks, ITMs and ATMs, to ensure accessibility?*

Appropriate scoping criteria and triggering events for accessible EIT must provide the greatest possible access to goods, services, and information offered by Title II and III

entities through the technology, while recognizing relevant ADA defenses that have provided adequate protection to covered entities for the past twenty years.

Hundreds of thousands of inaccessible kiosks and other EIT currently dot both the public sector and commercial landscape. EIT provides programs, services and information in the health, education, financial, retail, transportation, entertainment and government sectors. There is no escaping the fact that each day, more and more machines are doing what people used to do. In November 2010, for example, AARP reported that twenty-two states have emergency rooms equipped with (completely inaccessible) machines that dispense prescription medication.

Robust and stringent scoping and triggering event requirements, as well as mandated technical and performance standards and clear definitions, are necessary so people with disabilities do not fall further and further behind in the 21<sup>st</sup> century technology environment. The following principles will ensure that people with disabilities are able as quickly as possible to access the myriad services, programs and information now provided by covered entities through EIT, including kiosks, ITMs and ATMs.

#### Definition of EIT, kiosks, ITMs and ATMs

The Department should ensure that its new regulations for EIT include a forward-looking definition that will embrace the myriad types of electronic and information technology currently being used, and that will be used, by Title II and III entities to provide programs, services and information covered by the ADA.

#### Technical and Performance Standards for EIT

The new regulations should reference the Section 508 technical standards. Industry, people with disabilities, and the public at large need a consistent standard for accessible EIT development, and applying the technical standards of Section 508 to EIT used by Title II and III entities to provide programs, services and information will provide that. (This is different than the new web standards, where Commenters recommend that WCAG 2.0 AA, and not Section 508, serve as the technical standard. Unlike web accessibility, there is no internationally sanctioned direct set of robust and flexible technical standards for EIT that the Department should point to).

The Department's new rule should recognize that detailed technical standards already exist in Section 707 of the 2010 Standards for Accessible Design for Talking ATMs and Fare Machines. Developed as a result of a multi-year rigorous rule making process, the Talking ATM technical standards should not be tampered with (although we do recommend below a change to the Talking ATM scoping provision in Section 220 of the Standards.) The Department's new rules should not re-create the wheel of Talking ATM standards.

In addition to adopting Section 508 standards, the Department should adopt a generalized performance standard for EIT, such as the following: "EIT shall be accessible to and usable by persons with disabilities so that persons with disabilities may access, perform or acquire the same programs, services and information that the covered entity offers to people without disabilities by means of EIT with a substantially equivalent ease of use."

This two-pronged regulatory construct (general performance and technical specifications) is currently used in the Department's new construction regulations.

Section 36.401(a) of the DOJ's Title III regulations defines discrimination as including a failure to design and construct facilities that are "readily accessible to and usable by individuals with disabilities" and Section 36.406 requires that new construction "shall comply" with the technical standards set forth in the Standards for Accessible Design.

Scoping and Trigger events: New and Altered EIT

100% of new and altered EIT, including kiosks, ITMs, and ATMs owned, leased or operated by covered entities that provide services, programs and information to the public should meet accessibility standards. "New" in this context should be defined as technology installed on or after the effective date of the new regulations. "Altered" should include technology installed prior to the effective date and refurbished or modified in any way thereafter, including any significant software modification or upgrade. The Department's well-established "maximum extent feasible" protection for covered entities should apply to alterations of EIT.

A 100% requirement for new and altered EIT makes sense from the perspective of people with disabilities, the general public, and the covered entity. Significantly, the cost of accessibility at the time of new purchase or alteration is minimal, often involving only inexpensive hardware and a nominal software license fee, a fee that can at times be applied to multiple devices or even enterprise-wide without a per-device cost.

Moreover, it is unfair to make a person with a disability wander around seeking a small percentage of accessible devices among many. This is especially so for people who are deaf or hard of hearing. It is incredibly frustrating and a substantial waste of time to repeatedly find and test a device only to find audible information – and hence the device – inaccessible.

## Scoping and Triggering Events: Existing EIT

To ensure the greatest access possible to the hundreds of thousands of inaccessible kiosks and other EIT currently owned, leased or operated by Title II and III entities and deployed across the country, the Department's new regulations should clarify that accessibility upgrades to existing EIT are considered auxiliary aids and services under 28 C.F.R. 36.303 and 28 C.F.R. 35.104.

Such a classification fits easily within the Department's existing Title II and III regulatory construct. The 2010 revisions to Sections 36.303(b)(1) and (2) and to the definition of auxiliary aids and services in Section 35.104, for example, added the phrase "accessible electronic and information technology" to the list of examples of auxiliary aids and services in all these sections. And, by leaving untouched the language of Section 36.303(b) (4), and part (4) of the Title II auxiliary aid and service definition in Section 35.104, the Department reaffirmed that auxiliary aids and services also include "[a]cquisition or modification of equipment or devices."

In the new regulations specifically addressing kiosks, ITMs and other types of EIT, the Department should clarify that adding accessibility features to these devices is already required by the auxiliary aids and services requirements of Titles II and III.

As auxiliary aids and services, the obligation to add accessibility features to kiosks that were installed prior to the effective date of the new regulations would be subject to the "undue burden" defense for Title III entities, and the "undue financial or administrative burden" defense for Title II entities. See 28 C.F.R. 36.104 and 28 C.F.R. 35.150(a)(3). The Department should clarify that adding accessibility features to existing kiosks would never require a fundamental alteration of the kiosk or EIT.



The Department must make sure that people with disabilities can also use all the EIT that is now so integral to the provision of Title II and III programs, services and information.

*Question 21. Are there other types of equipment or furniture that impede accessibility that should be specifically addressed in the Department's regulation? What types of accessible equipment or furniture would effectively address any such concerns? What scoping would adequately address the impediments to accessibility and what triggering event would be appropriate for each type of other equipment or furniture? Are there particularly helpful types of equipment or furniture that are not generally available to the public that may assist individuals with disabilities, such as pool or shower chairs?*

There are other types of equipment and furniture that are of concern to individuals who are deaf and hard of hearing. First, any type of technology that requires individuals to speak an order or a command and to then listen for a response may be inaccessible to individuals who are deaf and hard of hearing. For instance, individuals who are deaf and hard of hearing may have difficulty using the drive-through at many fast food restaurants, where orders are placed through an intercom system. In addition, in any retail setting, if announcements are made via intercom about special sales, blue-light specials, or free gift give-aways, individuals who are deaf and hard of hearing have no way to access this information. In retail settings, there are also many alarm systems that are only available in an aural format. For example, if a customer is leaving a store, and his or her security tags have not been properly removed, a high pitched alarm may sound, but the individual who is deaf or hard of hearing will have no way of knowing that he or she has triggered that alarm. This leads to unnecessary embarrassment for the customer, who initially appears to be a theft in the eyes of other customers and store employees. The NAD would encourage the Department to consider all of these scenarios, to make menus and ordering systems available in a visual/non-verbal format, to make all alarm systems

available in a visual format, and to broadcast announcements in printed formats or with captions displayed on screen throughout the store.

Technology is a wonderful tool that allows new forms of access to individuals with disabilities. Yet, technology that relies on voice commands, aurally delivered information, or interactive voice/listening systems are often inaccessible to individuals with disabilities. As technology progresses, the NAD encourages the Department to remain flexible and to continue requiring all public accommodations to make their equipment and facilities available to individuals who are deaf and hard of hearing.

*Question 22. Do commenters have information available that can aid the Department in identifying existing accessible equipment and furniture? What are the costs of accessible equipment and furniture and how do these costs differ from the costs of inaccessible equipment and furniture? What are the normal replacement schedules for each of the types of equipment and furniture discussed in this ANPRM or other types proposed for coverage? What are the costs and benefits of different scoping requirements for different types of equipment and furniture? What are reasonable less costly or burdensome regulatory alternatives that would still achieve the objectives of the proposed rules? What are the costs and benefits, both quantitatively and qualitatively, of providing individuals with disabilities an equal opportunity to access health care, recreational facilities, exercise equipment, furniture in hotels, nursing homes, and hospitals, and electronic information and transactions? The Department seeks specific cost information, including information on the costs and benefits, as well as anecdotal evidence of the costs and benefits of accessible equipment and furniture.*

No comment on the exact cost data. However, the NAD reminds the Department that covered entities are required to provide accessible accommodations and equipment unless doing so would be a fundamental alteration of the services rendered, or would be an undue burden. 28 C.F.R. 36.104; 28 C.F.R. 35.150(a)(3). Undue burden is a fact-specific inquiry that is determined on a case-by-case basis. In determining undue burden, courts consider the cost of the individual accommodation against the overall costs of operating the entity as a whole. *See* 28 C.F.R. § 35.164; 28 C.F.R. § 36.104.

*Question 23. The Department seeks input regarding the impact the measures being contemplated by the Department with regard to accessible equipment and furniture will have on small entities if adopted by the Department. The Department encourages you to include any cost data on the potential economic impact on small entities with your response.*

No comment on the exact cost data. However, as stated in Question 22, a small business that is considered a public accommodation under the ADA is required to provide accessible accommodations and equipment to individuals with disabilities. If providing such an accommodation is an undue burden to a small entity, the business may use the ADA's undue burden defense. As stated above, undue burden in a fact-specific inquiry, determined on a case-by-case basis.

*Question 24. Are there alternatives that the Department can adopt, which were not previously discussed, that will alleviate the burden on small entities? Should there be different compliance requirements or timetables for small entities that take into account the resources available to small entities or should the Department adopt an exemption for certain or all small entities from coverage of the rule, in whole or in part. Please provide as much detail as possible in your response.*

See answers above on small entities.

### **SUMMARY AND CONCLUSION**

The NAD urges the Department to adopt the recommendations set forth above to ensure clarity and provide the guidance necessary to implement and reflect the intent of the ADA in the context of equipment and furniture.

Respectfully submitted,

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