

## Department of Justice

## § 35.190

### § 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

### § 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

### § 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

### § 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

### §§ 35.179–35.189 [Reserved]

## Subpart G—Designated Agencies

### § 35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and shall provide policy guid-

ance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.

(b) The Federal agencies listed in paragraph (b) (1) through (8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.

(1) *Department of Agriculture*: All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) *Department of Education*: All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

(3) *Department of Health and Human Services*: All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including “grass-roots” and community services organizations and programs, and preschool and daycare programs.

(4) *Department of Housing and Urban Development*: All programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral.

(5) *Department of Interior*: All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

(6) *Department of Justice*: All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of

justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e.g., audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies.

(7) *Department of Labor*: All programs, services, and regulatory activities relating to labor and the work force.

(8) *Department of Transportation*: All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.

(c) Responsibility for the implementation of subpart F of this part for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section may be assigned to other specific agencies by the Department of Justice.

(d) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

(e) When the Department receives a complaint directed to the Attorney General alleging a violation of this part that may fall within the jurisdiction of a designated agency or another Federal agency that may have jurisdiction under section 504, the Department may exercise its discretion to retain the complaint for investigation under this part.

[Order No. 1512–91, 56 FR 35716, July 26, 1991, as amended by AG Order No. 3180–2010, 75 FR 56184, Sept. 15, 2010]

§§ 35.191–35.999 [Reserved]

APPENDIX A TO PART 35—GUIDANCE TO REVISIONS TO ADA REGULATION ON NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

NOTE: This appendix contains guidance providing a section-by-section analysis of the revisions to 28 CFR part 35 published on September 15, 2010.

SECTION-BY-SECTION ANALYSIS AND RESPONSE TO PUBLIC COMMENTS

This section provides a detailed description of the Department's changes to the title II regulation, the reasoning behind those changes, and responses to public comments received on these topics. The Section-by-Section Analysis follows the order of the title II regulation itself, except that, if the Department has not changed a regulatory section, the unchanged section has not been mentioned.

SUBPART A—GENERAL

*Section 35.104 Definitions.*

“1991 Standards” and “2004 ADAAG”

The Department has included in the final rule new definitions of both the “1991 Standards” and the “2004 ADAAG.” The term “1991 Standards” refers to the ADA Standards for Accessible Design, originally published on July 26, 1991, and republished as appendix D to part 36. The term “2004 ADAAG” refers to ADA Chapter 1, ADA Chapter 2, and Chapters 3 through 10 of the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, which were issued by the Access Board on July 23, 2004, 36 CFR 1191, app. B and D (2009), and which the Department has adopted in this final rule. These terms are included in the definitions section for ease of reference.

“2010 Standards”

The Department has added to the final rule a definition of the term “2010 Standards.” The term “2010 Standards” refers to the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in §35.151.

“Auxiliary Aids and Services”

In the NPRM, the Department proposed revisions to the definition of auxiliary aids and services under §35.104 to include several additional types of auxiliary aids that have become more readily available since the promulgation of the 1991 title II regulation, and in recognition of new technology and devices available in some places that may provide effective communication in some situations.