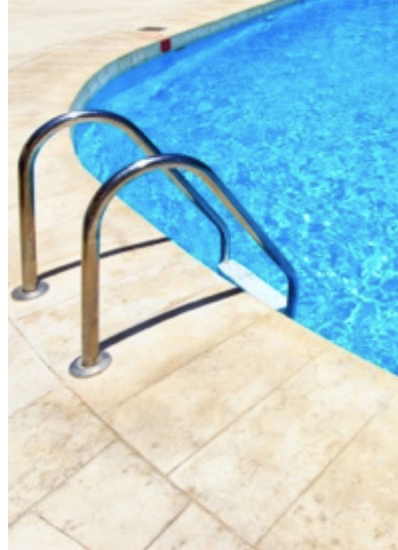




Written by [Brian Koenig](#) on March 18, 2012

DOJ Issues 60-Day Extension for ADA-compliant Pool Regulations

"People with disabilities should have the opportunity to participate in American society as fully and equally as those without disabilities," Thomas E. Perez, Assistant Attorney General for the Civil Rights Division, [said](#) on March 15. "The department encourages businesses and governments around the country to help break down barriers for people with disabilities so that we give every individual access to equal opportunity and equal justice."



Much of the controversy stemmed from an obscurity in the regulation that prompted a flurry of questions from leaders in the hotel industry. In anticipation of the rule, many pool owners invested in portable lifts. But after hearing rumors last year that the Department of Justice (DOJ) was going to require permanently-fixed lifts, industry leaders wrote letters to the department asking for clarification.

It wasn't until January 31 when the industry got its answer, which was that all 300,000 public pools across the U.S. would have to install a permanent lift for every "water element" — including spas — available to the public. The deadline was set for March 15, giving pool owners a month-and-a-half to comply with the DOJ's guidelines. The "clarification by the DOJ was kind of a game-changer," [asserted](#) Rob Lee, vice president for construction at The Hotel Group. "Anyone who bought six months ago would've had to buy another."

Those in the hotel and pool industry have been in scramble mode ever since the DOJ's "clarification" was issued, and some have even considered temporarily shutting down their pools altogether. "I'm talking to hotel (representatives) who are thinking about closing their pools until the confusion is settled," Todd Seiders, the risk management director for hotel insurer Petra Risk Solutions, [said](#) in an interview with *USA Today*. "This is the first time in the past several months that my clients have expressed that closing the pool is an option."

"There is no way all 300,000 pools can install permanent lifts by Thursday [March 15]," Conn Carroll of the *The Washington Examiner* [wrote](#) as the deadline approached. "There simply are not enough lifts in existence or enough people who know how to install them, according to industry spokesmen. Plus, each lift costs between \$3,000 and \$10,000 and installation can add \$5,000 to \$10,000 to the total."

Sens. Jim DeMint and Lindsey Graham of South Carolina introduced legislation on March 13 to overturn the regulation, by preventing Attorney General Eric Holder from compelling any rule related to public



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pools. The bill intends to amend the ADA in two areas: "Neither the Attorney General nor any official of the Federal Government shall have authority, under this subtitle or any other provision of Federal law, to administer or enforce a covered regulation, with respect to a pool provided by a public entity and covered by this subtitle."

"This is another one-size-fits-all big government mandate that could have a negative impact on Americans," Sen. DeMint charged on March 13. "It could lead to increased litigation and heavy fines that could force pools to close or raise fees on families. Pools with public access should have the flexibility to work directly with people with disabilities to accommodate their needs."

Although the DOJ said it would hold off on fines, the March 15 deadline would have opened hotel and pool owners up to costly lawsuits, inspired by the ADA. Instead of flooding hundreds of thousands of pools with federal inspectors, the DOJ would loosen the leash on trial lawyers — who, interestingly, as Carroll indicates, contributed more than \$45 million to the Obama campaign in 2008, and loads more to the Democratic Party.

In response to widespread backlash in the hotel industry, the DOJ [announced](#) a 60-day extension on March 15, along with a Notice of Proposed Rulemaking that will provide a 15-day comment period on a potential six-month extension.

"DOJ have been forced to admit they made a big overreach and are now retreating with a two-month delay on this unnecessary regulation," [asserted](#) DeMint spokesman Wesley Denton, also indicating that both DeMint and Graham will continue pursuing their bill. "This isn't over," Denton said. "Senator DeMint will continue fighting to stop this big government mandate from being implemented so public pools can have the flexibility to work directly with people with disabilities."



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