Proposed Amendments to the Americans With Disabilities Act (ADA): Another Costly Tax on Small-Business Owners

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Executive Summary:
The Americans With Disabilities Act (ADA) was passed in 1991, and became effective in 1992. The ADA protects the rights of peoples with disabilities and is modeled after laws prohibiting discrimination on the basis of race and gender. The original ADA addresses access to the workplace (Title I) and places of public accommodation and commercial facilities (Title III).

Title III generally requires that physical barriers in existing places of public accommodation must be removed if readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense). In addition, new construction of places of public accommodation and commercial facilities (non-residential facilities affecting commerce) must be accessible. Regulations implementing the accessibility requirements of Title III have now been in effect for over 14 years. Unfortunately, complexity and confusion surrounding the requirements, has led to a continuing stream of lawsuits against small business owners for allegedly violating the access requirements of Title III. Many small firms owners have been forced to settle out of court with employees and disability rights groups in order to avoid expensive lawsuits.

To improve access to public accommodations and to facilitate ADA compliance and enforcement by eliminating inconsistencies between federal requirements and State and local building codes, the U.S. Justice Department, the federal agency charged with enforcing Title III, has proposed a series of amendments to the original ADA regulations. The proposed amendments come to almost 300 pages and would adversely impact small businesses in a number of ways. Of particular concern is a provision that would require that employee areas accommodate wheelchairs.

The survey described in this short paper concerns only a small portion of the changes through four examples; many are industry specific. It must be remembered that small-business owners—generally not yet familiar with the proposed new amendments—cannot possibly know the eventual full costs of complying with the law.

Three thousand NFIB members were surveyed during January/February 2005 for their opinion on various proposed amendments to the ADA. The response rate was 15.6 percent (468 responses). Results indicated that about 10 percent of owners had not heard of the ADA, yet not quite a majority of those who responded (47.8 pct) believed that they were compliant with the existing rule requiring access in public areas. Some owners were uncertain whether the ADA law applied to them.

Using four examples of the new rules (described below), owners in the assumed compliant category believed that further amendments could cost about $2,700 per firm. Those owners who did not know if the ADA applied to them estimated a compliance cost of about $12,000. The average respondent firm size was about 15 employees.

The questionnaire also asked about employee parking, and owners’ opinions of the handicapped parking situations affecting their business. The modal response indicated that many handicapped spaces were vacant while non-disabled customers had no place to park.

Given that about 90 percent of all firms have fewer than 20 employees, the direct cost of complying with just four of the proposed new regulations from this convenience sample is in the area of $50 billion. The compliance cost of $50 billion does not include indirect costs such as management time to learn about the new regulations, nor any resulting losses in productivity from changing job duties and/or descriptions to make necessary accommodations due to the expanded regulations.

Another finding from the ADA survey concerned the question of who was responsible for building alterations—depending upon whether property was leased or owned. Many respondents who leased property—whether a store, distribution center, or commercial office — were uncertain over the responsibility for building alterations. This confusion may reflect the lack of specificity in leases over who is directly responsible for ADA compliance. Or the responsibility for alterations may be buried in a general clause in a lease that is unfamiliar to owners. We do not know.

The results indicate that this ambiguity leaves open many possibilities for lawsuits. Somewhat surprisingly, many owners who leased their property thought that they were responsible for building alterations to bring property into conformance with the ADA. This indeed may not be accurate.
On a scale of 1-10, owners were asked whether further alterations to their property were worth the cost. The mean response was 6.6 on a scale ranging from 1 to 10—a result that somewhat questions whether required building alterations might cost more than the value of the owner’s current structure. Questionnaire limitations did not permit direct queries over the value of owners’ property.

Limitations of this convenience sample are described below, followed by survey details. Table 1 presents the results of the survey in detail.

**Survey Limitations**
A convenience sample presents many limitations—both general and specific. The most general limitation is the lack of a control group. That is, we tabulate results of only those who responded, and do not know if their responses match the approximate 85 percent who did not respond. In addition to non-response bias, those who responded may feel more strongly about provisions of the ADA than those who failed to respond. We also could not determine whether or not respondents were subject to ADA regulations.

There is clearly bias in the responses because some NFIB member firms, such as farms, may be exempt from Title III. We could not determine because the survey did not ask respondents to identify their type of business. The third kind of bias arises from the use of the terms “compliant,” and “uncertain” in this survey. “Compliant” firms were defined as those with public access areas wide enough to accommodate wheelchairs. Clearly, this refers to only one of a number of different kinds of public access requirements. For example, it reveals no information about entrances, doors, stairs, usability of public rest rooms, drinking fountains and reach ranges to goods and services.

**Specific Survey Results:**
There were four cost categories listed in the questionnaire (appendix 1). These included:

1. Cost of lowering reach ranges from 54 “ to 48.”
2. Cost of installing fire alarms that also had a flashing light that could be seen by hearing impaired persons;
3. Cost of installing handrails on both sides of all stairways;
4. Cost of making a restroom handicapped accessible to both employees and customers.

In each case, eight ranges of costs were provided for the respondent. They ranged from the lowest size class-less than $100- to the highest—more than $50,000. The remainder fell in-between. For estimation purposes, the midpoint of each range was assumed to represent actual cost. This is also a survey limitation, but hopefully resulted in a better response rate.

Not all respondents answered each question, depending upon what a respondent thought was applicable to his/her particular business. In addition, about 5-8 percent of questionnaires were rejected if all cost categories were left blank.

The final costs for each of the four categories are summarized below in Table 1, shown for the “compliant” group, the “uncertain” group, and the total sample. The total column (column 3) represents a weighted average for the entire sample.
The average cost difference between the “uncertain” group (average cost for the 4 changes at $12,165) and the assumed “compliant” group (average cost for the 4 changes at $2,715) was $9,450 (or 348 percent).

Cost differences are estimated to be about $10,000 between owners categorized as compliant and others. Table 1 indicates a compliance cost of about $12,000 for the uncertain group versus about $2,700 for the “compliant” owners. The additional cost of the proposed ADA amendments for the entire sample is about $8,600 per firm. Differences may reflect size, industry specific sectors, respondent bias, geographic differences, or length of time in business, among other variables. We cannot tell.

For the larger uncertain group (n=232), the most expensive of the four examined alterations required by the new ADA amendments was altering restrooms to accommodate wheelchairs. These were estimated to
cost about $4,000 per firm. Lowering reach ranges from 54” to 48” were a close second, estimated to cost $3,800-$3,900 per firm.

Apparentlly there are some scale economies in learning to comply with ADA regulations. Owners with facilities that can currently accommodate wheelchairs in public areas (i.e., those categorized as “compliant”) believed that building alterations could be made at significantly lower costs than others. It is possible that communicating with other owners who have been through a regulatory compliance process in fact significantly can help lower costs. Joining a similar trade or industry group sometimes helps.4

Parking and Customer Access
Of the 468 respondents, about half answered the question about whether they provided parking. If the response was positive, then the questionnaire asked whether handicapped parking was provided. Of those who provided parking, many respondents observed that it was up to the manager of their property to accommodate such persons. But small business owners were clearly united on the excess of handicapped spaces, especially when it kept non-handicapped customers from parking. The implication was that a lack of parking spaces could translate into a loss of business, although the short survey did not ask for that information.

Although no such measurements were taken, unsolicited side comments indicate a general frustration with parking. Perhaps it is the inability of a business owner who rents his/her own store or space that they have little control over parking. But, in addition to excess spaces for persons with disabilities, other owners complained about non-disabled persons who parked in handicapped spaces.

Additional Indirect Costs
Most regulations impose large indirect costs on small business owners. Frequently, these fall into three categories: owner management costs, workers’ compensation costs, and outside costs like consulting fees. These costs may include the time it takes to learn about a new rule (management time), the increased potential for accidents by fully or partially disabled workers on the job site (workers’ compensation costs), and the cost of outside consultants hired to advise the owner on how best to comply with the various complex provisions of a new regulation. Indirect costs can sometimes exceed the basic compliance costs like lowering counters or light switches, or altering restrooms by factors of 5-10 times the direct costs. 5

Indirect costs also take account of expenditures made that may never be recouped. For example, if a small-business owner makes all of the alterations required by the proposed regulations of the ADA, it is possible that some of them will never be used. Economists call these costs “dead weight losses” since they frequently cannot be made up through price increases or increased sales.

Concluding Comments:
Proposed amendments to the ADA are likely to be both costly and confusing to small-business owners. While nominal costs are in the $10,000 range per firm, it is highly likely that indirect costs are to be considerably higher, especially the amounts spent trying to determine which sections of the law are applicable to each business owner in specific industry sectors.

It is not clear whether these proposed amendments will increase the customers of any small business, or increase employment opportunities for persons with disabilities. Debates have occurred for years over the best way to increase the labor force participation rate of persons with disabilities. Putting additional mandates on small business owners who can least afford them does not seem sensible when accommodations are already being made by owners, whether they are mandated or not. 6

(A copy of the questionnaire is available from the author at Bruce.Phillips@NFIB.org.

1 Thanks to Beth Gaudio of the NFIB Legal Foundation and Holly Wade of the Research Foundation for helpful comments on earlier drafts.
2 The ADA allows a disabled person who has been denied access to a public facility because of access violations to file a lawsuit.
3 This is based upon 5.0 million small firms nationally with fewer than 20 employees (in 2001) times an assumed direct compliance cost of $10,000 per firm. (A net figure, taking into account those owners who already have made alterations to their firm before it is required would lower the figure. That latter figure is unavailable).
6 A copy of the original questionnaire is available from the author upon request.