Americans With Disabilities Act (ADA)

A CCM Research and Information Service Tool Kit

September 2014
Americans with Disabilities Act (ADA)

A CCM Research and Information Tool Kit

**Introduction**

The following *Americans with Disabilities Act (ADA)* Tool Kit is provided as an informative publication to all CCM members. This Tool Kit is divided into three sections:

1. General Information
2. The ADA and Local Government
4. Specific Services and ADA Requirements

For more information regarding this or any question please contact the CCM Research and Information Services Department at (203) 498-3000 or research@ccm-ct.org.

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This publication is intended for general reference purposes only and is not intended to provide legal advice, opinions, or conclusions. If you have questions about particular legal issues, the application of the law to specific factual situations, or the interpretation of any statutes, ordinances, or case law referenced in this publication, CCM strongly recommends that you consult your attorney, certified public accountant, or other relevant party.

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AMERICANS WITH DISABILITIES ACT (ADA)

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A. GENERAL INFORMATION


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This Tool Kit is provided as a service to CCM members only.
Section 1

GENERAL INFORMATION
July 2012

**Americans With Disabilities Act (ADA) Resource List**


“ADA Information Line,” U.S. Department of Justice, 800/514-0301 (voice) 800/514-0383 (TTY), Information about ADA requirements and publications.

“ADA Home Page,” U.S. Department of Justice. Includes a list of ADA regulations and publications available on-line and has links to other Federal agencies involved in ADA enforcement, [www.ada.gov](http://www.ada.gov).


“The Access Board: A federal agency committed to accessible design.” The Access Board’s website includes information about accessibility standards and guidelines, technical assistance, training and research, and enforcement of codes and laws related to the ADA, [http://www.access-board.gov](http://www.access-board.gov). It can also be reach by phone at 800/872-2253 (voice) 800/993-2822 (TTY).

“The Disability Link Barn,” maintained by Access Unlimited. This site includes information on ADA, disability rights and disability activism, [http://www.accessunlimited.com](http://www.accessunlimited.com), 800/849-2143.

The EEOC can also be reached by phone at 800/669-4000 (voice) 800/669-6820 (TTY), [http://www.eeoc.gov](http://www.eeoc.gov).

Trauma Survivor’s Network can be reached at 800/556-7890, [http://www.traumasurvivorsnetwork.org](http://www.traumasurvivorsnetwork.org).
A Guide to Disability Rights Laws

(Abridged by CCM)

July 2009
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For persons with disabilities, this document is available in large print, Braille, audio tape, and computer
disk.

Reproduction of this document is encouraged.
This guide provides an overview of Federal civil rights laws that ensure equal opportunity for people with disabilities. To find out more about how these laws may apply to you, contact the agencies and organizations listed below.

**Americans with Disabilities Act (ADA)**

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

**ADA Title I: Employment**

Title I requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship. Religious entities with 15 or more employees are covered under title I.

Title I complaints must be filed with the U. S. Equal Employment Opportunity Commission (EEOC) within 180 days of the date of discrimination, or 300 days if the charge is filed with a designated State or local fair employment practice agency. Individuals may file a lawsuit in Federal court only after they receive a "right-to-sue" letter from the EEOC.

Charges of employment discrimination on the basis of disability may be filed at any U.S. Equal Employment Opportunity Commission field office. Field offices are located in 50 cities throughout the U.S. and are listed in most telephone directories under "U.S. Government." For the appropriate EEOC field office in your geographic area, contact:

(800) 669-4000 (voice)  (800) 669-6820 (TTY)

[www.eeoc.gov](http://www.eeoc.gov)

Publications and information on EEOC-enforced laws may be obtained by calling:

(800) 669-3362 (voice)  (800) 800-3302 (TTY)
For information on how to accommodate a specific individual with a disability, contact the Job Accommodation Network at:

(800) 526-7234 (voice)  (800) 781-9403 (TTY)

http://askjan.org

### ADA Title II: State and Local Government Activities

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Complaints of title II violations may be filed with the Department of Justice within 180 days of the date of discrimination. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department may bring a lawsuit where it has investigated a matter and has been unable to resolve violations. For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

www.ada.gov

(800) 514-0301 (voice)  (800) 514-0383 (TTY)

Title II may also be enforced through private lawsuits in Federal court. It is not necessary to file a complaint with the Department of Justice (DOJ) or any other Federal agency, or to receive a "right-to-sue" letter, before going to court.
**ADA Title II: Public Transportation**

The transportation provisions of title II cover public transportation services, such as city buses and public rail transit (e.g. subways, commuter rails, Amtrak). Public transportation authorities may not discriminate against people with disabilities in the provision of their services. They must comply with requirements for accessibility in newly purchased vehicles, make good faith efforts to purchase or lease accessible used buses, remanufacture buses in an accessible manner, and, unless it would result in an undue burden, provide paratransit where they operate fixed-route bus or rail systems. Paratransit is a service where individuals who are unable to use the regular transit system independently (because of a physical or mental impairment) are picked up and dropped off at their destinations. Questions and complaints about public transportation should be directed to:

Office of Civil Rights  
Federal Transit Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, Room E54-427  
Room 9102  
Washington, D.C. 20590

[www.fta.dot.gov/ada](http://www.fta.dot.gov/ada)  
(888) 446-4511 (voice/relay)

**Fair Housing Act**

The Fair Housing Act, as amended in 1988, prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. Its coverage includes private housing, housing that receives Federal financial assistance, and State and local government housing. It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. Other covered activities include, for example, financing, zoning practices, new construction design, and advertising.

The Fair Housing Act requires owners of housing facilities to make reasonable exceptions in their policies and operations to afford people with disabilities equal housing opportunities. For example, a landlord with a "no pets" policy may be required to grant an exception to this rule and allow an individual who is blind to keep a guide dog in the residence. The Fair Housing Act also requires landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space, as well as to common use spaces. (The landlord is not required to pay for the changes.) The Act further requires that new multifamily housing with four or more units be designed and built to allow access for persons with disabilities. This includes accessible common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units.
Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development. For more information or to file a complaint, contact:

Office of Compliance and Disability Rights Division  
Office of Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
451 7th Street, S.W., Room 5242  
Washington, D.C. 20410

www.hud.gov/offices/fheo

(800) 669-9777 (voice) (800) 927-9275 (TTY)

For questions about the accessibility provisions of the Fair Housing Act, contact Fair Housing FIRST at:

www.fairhousingfirst.org

(888) 341-7781 (voice/TTY)

For publications, you may call the Housing and Urban Development Customer Service Center at:

(800) 767-7468 (voice/relay)

Additionally, the Department of Justice can file cases involving a pattern or practice of discrimination. The Fair Housing Act may also be enforced through private lawsuits.

**Voting Accessibility for the Elderly and Handicapped Act**

The Voting Accessibility for the Elderly and Handicapped Act of 1984 generally requires polling places across the United States to be physically accessible to people with disabilities for federal elections. Where no accessible location is available to serve as a polling place, a political subdivision must provide an alternate means of casting a ballot on the day of the election. This law also requires states to make available registration and voting aids for disabled and elderly voters, including information by TTYs (also known as TDDs) or similar devices. For more information, contact:

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Voting Section - 1800 G  
Washington, D.C. 20530

(800) 253-3931 (voice/TTY)
National Voter Registration Act

The National Voter Registration Act of 1993, also known as the "Motor Voter Act," makes it easier for all Americans to exercise their fundamental right to vote. One of the basic purposes of the Act is to increase the historically low registration rates of minorities and persons with disabilities that have resulted from discrimination. The Motor Voter Act requires all offices of State-funded programs that are primarily engaged in providing services to persons with disabilities to provide all program applicants with voter registration forms, to assist them in completing the forms, and to transmit completed forms to the appropriate State official. For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Voting Section - 1800 G
Washington, D.C. 20530

www.usdoj.gov/crt/voting (800) 253-3931 (voice/TTY)

Civil Rights of Institutionalized Persons Act

The Civil Rights of Institutionalized Persons Act (CRIPA) authorizes the U.S. Attorney General to investigate conditions of confinement at State and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes, and institutions for people with psychiatric or developmental disabilities. Its purpose is to allow the Attorney General to uncover and correct widespread deficiencies that seriously jeopardize the health and safety of residents of institutions. The Attorney General does not have authority under CRIPA to investigate isolated incidents or to represent individual institutionalized persons.

The Attorney General may initiate civil law suits where there is reasonable cause to believe that conditions are "egregious or flagrant," that they are subjecting residents to "grievous harm," and that they are part of a "pattern or practice" of resistance to residents' full enjoyment of constitutional or Federal rights, including title II of the ADA and section 504 of the Rehabilitation Act. For more information or to bring a matter to the Department of Justice's attention, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Special Litigation Section - PHB
Washington, D.C. 20530

www.usdoj.gov/crt/split (877) 218-5228 (voice/TTY)
**Individuals with Disabilities Education Act**

The Individuals with Disabilities Education Act (IDEA) (formerly called P.L. 94-142 or the Education for all Handicapped Children Act of 1975) requires public schools to make available to all eligible children with disabilities a free appropriate public education in the least restrictive environment appropriate to their individual needs.

IDEA requires public school systems to develop appropriate Individualized Education Programs (IEP's) for each child. The specific special education and related services outlined in each IEP reflect the individualized needs of each student.

IDEA also mandates that particular procedures be followed in the development of the IEP. Each student's IEP must be developed by a team of knowledgeable persons and must be at least reviewed annually. The team includes the child's teacher; the parents, subject to certain limited exceptions; the child, if determined appropriate; an agency representative who is qualified to provide or supervise the provision of special education; and other individuals at the parents' or agency's discretion.

If parents disagree with the proposed IEP, they can request a due process hearing and a review from the State educational agency if applicable in that state. They also can appeal the State agency's decision to State or Federal court. For more information, contact:

Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-7100

[www.ed.gov/about/offices/list/osers/osep](http://www.ed.gov/about/offices/list/osers/osep)

(202) 245-7468 (voice/TTY)

**General Sources of Disability Rights Information**

ADA Information Line
(800) 514-0301 (voice)
(800) 514-0383 (TTY)

[www.ada.gov](http://www.ada.gov)

Regional Disability and Business Technical Assistance Centers
(800) 949-4232 (voice/TTY)

[www.adata.org](http://www.adata.org)
Statute Citations

Americans with Disabilities Act of 1990
42 U.S.C. §§ 12101 et seq.

Implementing Regulations:
29 CFR Parts 1630, 1602 (Title I, EEOC)
28 CFR Part 35 (Title II, Department of Justice)
49 CFR Parts 27, 37, 38 (Title II, III, Department of Transportation)
28 CFR Part 36 (Title III, Department of Justice)
47 CFR §§ 64.601 et seq. (Title IV, FCC)

Civil Rights of Institutionalized Persons Act
42 U.S.C. §§ 1997 et seq.

Fair Housing Amendments Act of 1988
42 U.S.C. §§ 3601 et seq.

Implementing Regulation:
24 CFR Parts 100 et seq.

Individuals with Disabilities Education Act
20 U.S.C. §§ 1400 et seq.

Implementing Regulation:
34 CFR Part 300

National Voter Registration Act of 1993

Voting Accessibility for the Elderly and Handicapped Act of 1984
42 U.S.C. §§ 1973ee et seq.

last update: April 9, 2012
Barriers to employment, transportation, public accommodations, public services, and telecommunications have imposed staggering economic and social costs on American society and have undermined our well-intentioned efforts to educate, rehabilitate, and employ individuals with disabilities. By breaking down these barriers, the Americans with Disabilities Act (ADA) will enable society to benefit from the skills and talents of individuals with disabilities, will allow us all to gain from their increased purchasing power and ability to use it, and will lead to fuller, more productive lives for all Americans.

The Americans with Disabilities Act gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

Fair, swift, and effective enforcement of this landmark civil rights legislation is a high priority of the Federal Government. This booklet is designed to provide answers to some of the most often asked questions about the ADA.

For answers to additional questions, call the ADA Information Line
800-514-0301 (voice)
800-514-0383 (TTY)

Additional ADA resources are listed in the Resources section of this document.

May 2002
State and Local Governments

Q. Does the ADA apply to State and local governments?

A. Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State or local governments. It clarifies the requirements of section 504 of the Rehabilitation Act of 1973 for public transportation systems that receive Federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance. It establishes detailed standards for the operation of public transit systems, including commuter and intercity rail (AMTRAK).

Q. When do the requirements for State and local governments become effective?

A. In general, they became effective on January 26, 1992.

Q. How does title II affect participation in a State or local government's programs, activities, and services?

A. A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity. The State or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities. Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification.

Q. Does title II cover a public entity's employment policies and practices?

A. Yes. Title II prohibits all public entities, regardless of the size of their work force, from discriminating in employment against qualified individuals with disabilities. In addition to title II's employment coverage, title I of the ADA and section 504 of the Rehabilitation Act of 1973 prohibit employment discrimination against qualified individuals with disabilities by certain public entities.

Q. What changes must a public entity make to its existing facilities to make them accessible?

A. A public entity must ensure that individuals with disabilities are not excluded from services,
programs, and activities because existing buildings are inaccessible. A State or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on January 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites.

Q. When must structural changes be made to attain program accessibility?

A. Structural changes needed for program accessibility must be made as expeditiously as possible, but no later than January 26, 1995. This three-year time period is not a grace period; all alterations must be accomplished as expeditiously as possible. A public entity that employs 50 or more persons must have developed a transition plan by July 26, 1992, setting forth the steps necessary to complete such changes.

Q. What is a self-evaluation?

A. A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with title II's requirements. All public entities must complete a self-evaluation by January 26, 1993. A public entity that employs 50 or more employees must retain its self-evaluation for three years. Other public entities are not required to retain their self-evaluations, but are encouraged to do so because these documents evidence a public entity's good faith efforts to comply with title II's requirements.

Q. What does title II require for new construction and alterations?

A. The ADA requires that all new buildings constructed by a State or local government be accessible. In addition, when a State or local government undertakes alterations to a building, it must make the altered portions accessible.

Q. How will a State or local government know that a new building is accessible?

A. A State or local government will be in compliance with the ADA for new construction and alterations if it follows either of two accessibility standards. It can choose either the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, which is the standard that must be used for public accommodations and commercial facilities under title III of the ADA. If the State or local government chooses the ADA Accessibility Guidelines, it is not entitled to the elevator exemption (which permits certain private buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).
Q. What requirements apply to a public entity's emergency telephone services, such as 911?

A. State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access. Where a public entity provides 911 telephone service, it may not substitute a separate seven-digit telephone line as the sole means for access to 911 services by nonvoice users. A public entity may, however, provide a separate seven-digit line for the exclusive use of nonvoice callers in addition to providing direct access for such calls to its 911 line.

Q. Does title II require that telephone emergency service systems be compatible with all formats used for nonvoice communications?

A. No. At present, telephone emergency services must only be compatible with the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency environment, a public entity would not be required to provide direct access to computer modems using formats other than Baudot.

Q. How will the ADA's requirements for State and local governments be enforced?

A. Private individuals may bring lawsuits to enforce their rights under title II and may receive the same remedies as those provided under section 504 of the Rehabilitation Act of 1973, including reasonable attorney's fees. Individuals may also file complaints with eight designated Federal agencies, including the Department of Justice and the Department of Transportation.

Miscellaneous

Q. Is the Federal government covered by the ADA?

A. The ADA does not cover the executive branch of the Federal government. The executive branch continues to be covered by title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of handicap and which is a model for the requirements of the ADA. The ADA, however, does cover Congress and other entities in the legislative branch of the Federal government.

Q. Does the ADA cover private apartments and private homes?

A. The ADA does not cover strictly residential private apartments and homes. If, however, a place of public accommodation, such as a doctor's office or day care center, is located in a
private residence, those portions of the residence used for that purpose are subject to the ADA's requirements.

Q. Does the ADA cover air transportation?

A. Discrimination by air carriers in areas other than employment is not covered by the ADA but rather by the Air Carrier Access Act (49 U.S.C. 1374 (c)).

Q. What are the ADA's requirements for public transit buses?

A. The Department of Transportation has issued regulations mandating accessible public transit vehicles and facilities. The regulations include requirements that all new fixed-route, public transit buses be accessible and that supplementary paratransit services be provided for those individuals with disabilities who cannot use fixed-route bus service. For information on how to contact the Department of Transportation, see page 29.

Q. How will the ADA make telecommunications accessible?

A. The ADA requires the establishment of telephone relay services for individuals who use telecommunications devices for deaf persons (TDD's) or similar devices. The Federal Communications Commission has issued regulations specifying standards for the operation of these services.

Q. Are businesses entitled to any tax benefit to help pay for the cost of compliance?

A. As amended in 1990, the Internal Revenue Code allows a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers. The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

**Telephone Numbers for ADA Information**

This list contains the telephone numbers of Federal agencies that are responsible for providing information to the public about the Americans with Disabilities Act and organizations that have been funded by the Federal government to provide information through staffed information centers. The agencies and organizations listed are sources for obtaining information about the law's requirements and informal guidance in understanding and complying with the ADA.
ADA Information Line
U.S. Department of Justice
For ADA publications and questions

800-514-0301 (voice)  800-514-0383 (TTY)
www.ada.gov or ada.gov

U.S. Equal Employment Opportunity Commission
For publications

800-669-3362 (voice)  800-800-3302 (TTY)

For questions

800-669-4000 (voice)  800-669-6820 (TTY)
www.eeoc.gov

U.S. Department of Transportation
ADA Assistance Line for
regulations and complaints

888-446-4511 (voice)
TTY: use relay service
www.fta.dot.gov/civilrights/civil_rights_2360.html

Federal Communications Commission
888-225-5322 (voice)  888-835-5322 (TTY)
www.fcc.gov/cgb/dro

U.S. Architectural and Transportation Barriers Compliance Board
800-872-2253 (voice)  800-993-2822 (TTY)
www.access-board.gov

U.S. Department of Labor
Job Accommodation Network
800-526-7234 (voice & TTY)
www.jan.wvu.edu

U.S. Department of Education
Regional Disability and Business Technical Assistance Centers
800-949-4232 (voice & TTY)
wwwadata.org

U.S. Department of Transportation
Project Action
Addresses for ADA Information

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Disability Rights Section - NYAV
Washington, DC 20530

U.S. Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20507

U.S. Department of Transportation
Federal Transit Administration
400 Seventh Street, SW
Washington, DC 20590

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Architectural and Transportation Barriers Compliance Board
1331 F Street, NW Suite 1000
Washington, DC 20004-1111

This document is available in the following alternate formats for people with disabilities:

- Braille
- Large print
- Audiocassette
- Electronic file on computer disk.

Note: Reproduction of this document is encouraged.

Last updated: November 14, 2008
Section 2

THE ADA & LOCAL GOVERNMENT
Title II Highlights

I. Who is covered by title II of the ADA

II. Overview of Requirements

III. "Qualified Individual with a Disability"

IV. Program Access

V. Integrated Programs

VI. Communications

VII. New Construction and Alterations

VIII. Enforcement

IX. Complaints

X. Designated Agencies

XI. Technical Assistance

I. Who is Covered by Title II of the ADA

The title II regulation covers "public entities."

"Public entities" include any State or local government and any of its departments, agencies, or other instrumentalities.

All activities, services, and programs of public entities are covered, including activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment.
Unlike section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, title II extends to all the activities of State and local governments whether or not they receive Federal funds. Private entities that operate public accommodations, such as hotels, restaurants, theaters, retail stores, dry cleaners, doctors' offices, amusement parks, and bowling alleys, are not covered by title II but are covered by title III of the ADA and the Department's regulation implementing title III.

Public transportation services operated by State and local governments are covered by regulations of the Department of Transportation. DOT's regulations establish specific requirements for transportation vehicles and facilities, including a requirement that all new busses must be equipped to provide services to people who use wheelchairs.

II. Overview of Requirements

State and local governments --
May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability. For example, a city may not refuse to allow a person with epilepsy to use parks and recreational facilities.
Must provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.

Must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs or activities unless "necessary" for the provisions of the service, program or activity. Requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification, are also prohibited.

Safety requirements that are necessary for the safe operation of the program in question, such as requirements for eligibility for drivers' licenses, may be imposed if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities. Are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.
For example, a city office building would be required to make an exception to a rule prohibiting animals in public areas in order to admit guide dogs and other service animals assisting individuals with disabilities.
Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

May provide special benefits, beyond those required by the regulation, to individuals with disabilities.
May not place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.

Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.

**III. "Qualified Individuals with Disabilities"

Title II of the Americans with Disabilities Act provides comprehensive civil rights protections for "qualified individuals with disabilities."

An "individual with a disability" is a person who --

* Has a physical or mental impairment that substantially limits a "major life activity", or
* Has a record of such an impairment, or
* Is regarded as having such an impairment.

Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.

"Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.

"Qualified" individuals.

A "qualified" individual with a disability is one who meets the essential eligibility requirements for the program or activity offered by a public entity.

The "essential eligibility requirements" will depend on the type of service or activity involved. For some activities, such as State licensing programs, the ability to meet specific skill and performance requirements may be "essential."

For other activities, such as where the public entity provides information to anyone who requests it, the "essential eligibility requirements" would be minimal.
IV. Program Access

State and local governments--
Must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible.

Need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.

Can provide the services, programs, and activities offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed, such as -- Relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building.

Providing an aide or personal assistant to enable an individual with a disability to obtain the service.

Providing benefits or services at an individual's home, or at an alternative accessible site.
May not carry an individual with a disability as a method of providing program access, except in oemanifestly exceptionali circumstances.

Are not required to take any action that would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens. However, public entities must take any other action, if available, that would not result in a fundamental alteration or undue burdens but would ensure that individuals with disabilities receive the benefits or services.

V. Integrated Programs

Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the Americans with Disabilities Act.

Public entities may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.

Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program.
For example, it would not be a violation for a city to offer recreational programs specially designed for children with mobility impairments, but it would be a violation if the city refused to allow children with disabilities to participate in its other recreational programs.
State and local governments may not require an individual with a disability to accept a special accommodation or benefit if the individual chooses not to accept it.

VI. Communications
State and local governments must ensure effective communication with individuals with disabilities.

Where necessary to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids.
"Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, Brailled materials, and large print materials.

A public entity may not charge an individual with a disability for the use of an auxiliary aid. Telephone emergency services, including 911 services, must provide direct access to individuals with speech or hearing impairments.

Public entities are not required to provide auxiliary aids that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. However, public entities must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or undue burdens.

VII. New Construction and Alterations
Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities.

When a public entity undertakes alterations to an existing building, it must also ensure that the altered portions are accessible.

The ADA does not require retrofitting of existing buildings to eliminate barriers, but does establish a high standard of accessibility for new buildings. Public entities may choose between two technical standards for accessible design: The Uniform Federal Accessibility Standard (UFAS), established under the Architectural Barriers Act, or the Americans with Disability Act Accessibility Guidelines, adopted by the Department of Justice for places of public accommodation and commercial facilities covered by title III of the ADA.

The elevator exemption for small buildings under ADA Accessibility Guidelines would not apply to public entities covered by title II.
VIII. Enforcement
Private parties may bring lawsuits to enforce their rights under title II of the ADA. The remedies available are the same as those provided under section 504 of the Rehabilitation Act of 1973. A reasonable attorney's fee may be awarded to the prevailing party.

Individuals may also file complaints with appropriate administrative agencies. The regulation designates eight Federal agencies to handle complaints filed under title II.

Complains may also be filed with any Federal agency that provides financial assistance to the program in question, or with the Department of Justice, which will refer the complaint to the appropriate agency.

IX. Complaints

Any individual who believes that he or she is a victim of discrimination prohibited by the regulation may file a complaint. Complaints on behalf of classes of individuals are also permitted.

Complaints should be in writing, signed by the complainant or an authorized representative, and should contain the complainant's name and address and describe the public entity's alleged discriminatory action.

Complaints may be sent to --
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

Complaints may also be sent to agencies designated to process complaints under the regulation, or to agencies that provide Federal financial assistance to the program in question.

X. Designated Agencies

The following agencies are designated for enforcement of title II for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas --

Department of Agriculture: Farming and the raising of livestock, including extension services.

Department of Education: Education systems and institutions (other than health-related schools), and libraries.
**Department of Health and Human Services:** Schools of medicine, dentistry, nursing, and other health-related schools; health care and social service providers and institutions, including grassroots and community services organizations and programs; and preschool and daycare programs.

**Department of Housing and Urban Development:** State and local public housing, and housing assistance and referral.

**Department of Interior:** Lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

**Department of Justice:** Public safety, law enforcement, and the administration of justice, including courts and correctional institutions; commerce and industry, including banking and finance, consumer protection, and insurance; planning, development, and regulation (unless otherwise assigned); State and local government support services; and all other government functions not assigned to other designated agencies.

**Department of Labor:** Labor and the work force.

**Department of Transportation:** Transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.

**XI. Technical Assistance**

The ADA requires that the Federal agencies responsible for issuing ADA regulations provide "technical assistance."

Technical assistance is the dissemination of information (either directly by the Department or through grants and contracts) to assist the public, including individuals protected by the ADA and entities covered by the ADA, in understanding the new law.

Methods of providing information include, for example, audio-visual materials, pamphlets, manuals, electronic bulletin boards, checklists, and training.

The Department issued for public comment on December 5, 1990, a government-wide plan for the provision of technical assistance.

The Department's efforts focus on raising public awareness of the ADA by providing--Factsheets and pamphlets in accessible formats,

Speakers for workshops, seminars, classes, and conferences,
An ADA telephone information line, and

Access to ADA documents through an electronic bulletin board for users of personal computers. The Department has established a comprehensive program of technical assistance relating to public accommodations and State and local governments. Grants will be awarded for projects to inform individuals with disabilities and covered entities about their rights and responsibilities under the ADA and to facilitate voluntary compliance.

The Department will issue a technical assistance manual by January 26, 1992, for individuals or entities with rights or duties under the ADA.
For additional information, contact:
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section, NYAV
Washington, D.C 20035-6738

(800) 514-0301 (Voice)
(800) 514-0383 (TDD)

www.ada.gov

last updated August 29, 2002
COMMON QUESTIONS ABOUT
TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA)

1. Q: Do we have to retrofit every existing municipal building in order to meet the accessibility requirements of the ADA?

A: No. Title II of the ADA requires that a public entity make its programs accessible to people with disabilities, not necessarily each facility or part of a facility. Program accessibility may be achieved by a number of methods. While in many situations providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility, the public entity may pursue alternatives to structural changes in order to achieve program accessibility. For example, where the second-floor office of a public welfare agency may be entered only by climbing a flight of stairs, an individual with a mobility impairment seeking information about welfare benefits can be served in an accessible ground floor location or in another accessible building. Similarly, a town may move a public hearing from an inaccessible building to a building that is readily accessible. When choosing among available methods of providing program accessibility, a public entity must give priority to those methods that offer services, programs, and activities in the most integrated setting appropriate.

2. Q: If we opt to make structural changes in providing program accessibility, are we required to follow a particular design standard in making those changes?

A. Yes. When making structural changes to achieve program accessibility, a public entity must make those changes in accordance with the standards for new construction and alterations. See question #5.

3. Q: What is the time line for making structural changes?

A: Any structural changes that are required to achieve program accessibility must be made by January 26, 1995. Each public entity with 50 or more employees was required to complete a transition plan by July 26, 1992, setting forth the steps necessary to complete the changes.

4. Q: Are there any limitations on the program accessibility requirement?

A: Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the
If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

5. Q. What architectural design standard must we follow for new construction and alterations?

A: Public entities may choose from two design standards for new construction and alterations. They can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). ADAAG is the standard that must be used for privately-owned public accommodations and commercial facilities under title III of the ADA. If ADAAG is chosen, however, public entities are not entitled to the elevator exemption (which permits certain privately-owned buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

6. Q. Is the Federal Government planning to eliminate this choice and establish one design standard for new construction and alterations?

A. Yes. The Department of Justice is proposing to amend its current ADA Standards for Accessible Design (which incorporate ADAAG) to add sections dealing with judicial, legislative, and regulatory facilities, detention and correctional facilities, residential housing, and public rights-of-way. The proposed amendment would apply these Standards to new construction and alterations under title II. Under the proposed rule, the choice between ADAAG and UFAS would be eliminated.

7. Q: We want to make accessibility alterations to our city offices, which are located in an historic building listed in the National Register of Historic Places. Are we prohibited from making changes? Which rules apply to us? What if these alterations would destroy the historic nature of the building?

A: Alterations to historic properties must comply with the specific provisions governing historic properties in ADAAG or UFAS, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative standards may be used. The decision to use alternative standards for that feature must be made in consultation with the appropriate historic advisory board designated in ADAAG or UFAS, and interested persons should be invited to participate in the decisionmaking process.

The alternative requirements for historic buildings or facilities provide a minimal level of access. For example --
1) An accessible route is only required from one site access point (such as the parking lot).
2) A ramp may be steeper than is ordinarily permitted.
3) The accessible entrance does not need to be the one used by the general public.
4) Only one accessible toilet is required and it may be unisex.
5) Accessible routes are only required on the level of the accessible entrance.

8. Q: But what if complying with even these minimal alternative requirements will threaten or destroy the historic significance?
   
   A: In such a case, which is rare, the public entity need not make the structural changes required by UFAS or ADAAG. If structural modifications that comply with UFAS or ADAAG cannot be undertaken, the Department's regulation requires that "program accessibility" be provided.

9. Q: Does a city have to provide curb ramps at every intersection on existing streets?
   
   A: No. To promote both efficiency and accessibility, public entities may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a marginally longer route. In addition, the fundamental alteration and undue burden limitations may limit the number or curb ramps required.
   
   To achieve or maintain program accessibility, it may be appropriate to establish an ongoing procedure for installing curb ramps upon request in areas frequented by individuals with disabilities as residents, employees, or visitors.
   
   However, when streets, roads, or highways are newly built or altered, they must have ramps or sloped areas wherever there are curbs or other barriers to entry from a sidewalk or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas wherever they intersect with streets, roads, or highways. Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance.

10. Q: Where a public library's open stacks are located on upper floors with no elevator access, does the library have to install a lift or an elevator?
    
    A: No. As an alternative to installing a lift or elevator, library staff may retrieve books for patrons who use wheelchairs. Staff must be available to provide assistance during the operating hours of the library.

11. Q: Does a municipal performing arts center that provides
inexpensive balcony seats and more expensive orchestra seats have to provide access to the balcony seats?

A: No. In lieu of providing accessible seating on the balcony level, the city can make a reasonable number of accessible orchestra-level seats available at the lower price of balcony seats.

12. Q: Is a city required to modify its policies whenever requested in order to accommodate individuals with disabilities?

A: No. A public entity must make only "reasonable modifications" in its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a modification would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

For example, where a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district and, in order to install a ramp to the front entrance of a pharmacy, the owner requests a variance to encroach on the set-back by three feet, granting the variance may be a reasonable modification of town policy.

On the other hand, where an individual with an environmental illness requests a public entity to adopt a policy prohibiting the use of perfume or other scented products by its employees who come into contact with the public, adopting such a policy is not considered a "reasonable" modification of the public entity's personnel policy.

13. Q: Does the requirement for effective communication mean that a city has to put all of its documents in Braille?

A: Braille is not a "required" format for all documents. A public entity must ensure that its communications with individuals with disabilities are as effective as communications with others.

A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. Examples of auxiliary aids and services that benefit various individuals with vision impairments include magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or assistance in locating items.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, for individuals with vision impairments, employees can often provide oral directions or read written instructions. In many simple transactions, such as paying bills or filing applications, communications provided through such
simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, or large print materials.

14. Q: Must tax bills from public entities be available in Braille and/or large print? What about other documents?

A: Tax bills and other written communications provided by public entities are subject to the requirement for effective communication. Thus, where a public entity provides information in written form, it must, when requested, make that information available to individuals with vision impairments in a form that is usable by them. "Large print" versions of written documents may be produced on a copier with enlargement capacities. Brailled versions of documents produced by computers may be produced with a Braille printer, or audio tapes may be provided for individuals who are unable to read large print or do not use Braille. Brailled documents are not required if effective communication is provided by other means.

15. Q: Does a city have to arrange for a sign language interpreter every time staff members deal with people who are deaf or hard of hearing?

A: Sign language interpreters are not required for all dealings with people who are deaf or hard of hearing. A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication.

Examples of auxiliary aids and services that benefit individuals with hearing impairments include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, and exchange of written notes.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, employees can often communicate with individuals who have hearing impairments through written materials and exchange of written notes. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple
methods and may require the use of qualified interpreters, assistive listening systems, videotext displays, or other aids or services.

16. Q: Do all city departments have to have TDD's to communicate with people who have hearing or speech impairments?

   A: No. Public entities that communicate by telephone must provide equally effective communication to individuals with disabilities, including hearing and speech impairments. If telephone relay services, such as those required by title IV of the ADA, are available, these services generally may be used to meet this requirement.

   Relay services involve a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user. Where such services are available, public employees must be instructed to accept and handle relayed calls in the normal course of business.

   However, State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access.

17. Q: Are there any limitations on a public entity's obligation to provide effective communication?

   A: Yes. This obligation does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities, or in undue financial and administrative burdens.

18. Q: Is there any money available to help local governments comply with the ADA?

   A: Yes. Funding available through the Community Development Block Grant program at the U.S. Department of Housing and Urban Development may be used for accessibility purposes, such as installation of ramps, curb cuts, wider doorways, wider parking spaces, and elevators. Units of local government that have specific questions concerning the use of CDBG funds for the removal of barriers should contact their local HUD Office of Community Planning and Development or call the Entitlement Communities Division at HUD, (202) 708-1577, for additional information.
Americans with Disabilities Act

An ADA Guide for Local Governments

Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities

One of the most important roles of local government is to protect their citizenry from harm, including helping people prepare for and respond to emergencies. Making local government emergency preparedness and response programs accessible to people with disabilities is a critical part of this responsibility. Making these programs accessible is also required by the Americans with Disabilities Act of 1990 (ADA).

A police officer uses written notes and hand gestures to tell a man who is deaf to evacuate. A man using a wheelchair enters a paratransit van provided so he can evacuate from his home. A family, including a woman with a service animal, arrives at a shelter.

PLANNING

If you are responsible for your community’s emergency planning or response activities, you should involve people with disabilities in identifying needs and evaluating effective emergency management practices. Issues that have the greatest impact on people with disabilities include:

• notification;
• evacuation;
• emergency transportation;
• sheltering;
• access to medications, refrigeration, and back-up power;
• access to their mobility devices or service animals while in transit or at shelters; and
• access to information.

In planning for emergency services, you should consider the needs of people who use mobility aids such as wheelchairs, scooters, walkers, canes or crutches, or people who have limited stamina. Plans also need to include people who use oxygen or respirators, people who are blind or who have low vision, people who are deaf or hard of hearing, people who have a cognitive disability, people with mental illness, and those with other types of disabilities.

Action Step: Planning

Solicit and incorporate input from people with different types of disabilities (e.g. mobility, vision, hearing, cognitive and other disabilities) regarding all phases of your emergency management plan including:

• preparation;
• notification;
• response; and
• clean up.

NOTIFICATION

Many traditional emergency notification methods are not accessible to or usable by people with disabilities. People who are deaf or hard of hearing cannot hear radio, television, sirens, or other audible alerts. Those who are blind or who have low vision may not be aware of visual cues, such as flashing lights. Warning methods should be developed to ensure that all citizens will have the information necessary to make sound decisions and take appropriate, responsible action. Often, using a combination of methods will be more effective than relying on one method alone. For instance, combining visual and audible alerts will reach a greater audience than either method would by itself.

Action Step: Notification

Provide ways to inform people who are deaf or hard of hearing of an impending disaster if you use emergency warning systems such as sirens or other audible alerts.
A police officer uses hand gestures and a printed note to tell a woman who is deaf that she needs to evacuate her home.

When the electric power supply is affected, it may be necessary to use several forms of notification. These might include the use of telephone calls, auto-dialed TTY (teletypewriter) messages, text messaging, E-mails, and even direct door-to-door contact with pre-registered individuals.

A woman who is deaf reads a captioned evacuation notice on her television.
Also, you should consider using open-captioning on local TV stations in addition to incorporating other innovative uses of technology into such procedures, as well as lower-tech options such as dispatching qualified sign language interpreters to assist in broadcasting emergency information provided to the media.

EVACUATION

Individuals with disabilities will face a variety of challenges in evacuating, depending on the nature of the emergency. People with a mobility disability may need assistance leaving a building without a working elevator. Individuals who are blind or who have limited vision may no longer be able to independently use traditional orientation and navigation methods. An individual who is deaf may be trapped somewhere unable to communicate with anyone because the only communication device relies on voice. Procedures should be in place to ensure that people with disabilities can evacuate the physical area in a variety of conditions and with or without assistance.

Action Steps: Evacuation of People with Disabilities

Adopt policies to ensure that your community evacuation plans enable people with disabilities, including those who have mobility, vision, hearing, or cognitive disabilities, mental illness, or other disabilities, to safely self-evacuate or to be evacuated by others. Some communities are instituting voluntary, confidential registries of persons with disabilities who may need individualized evacuation assistance or notification. If you adopt or maintain such a registry, have procedures in place to ensure its voluntariness, guarantee confidentiality controls, and develop a process to update the registry. Also consider how best to publicize its availability. Whether or not a registry is used, your plan should address accessible transportation needs for people who use wheelchairs, scooters, or other mobility aids as well as people who are blind or who have low vision.

A transit bus equipped with a wheelchair lift is used to evacuate individuals and families.
Both public and private transportation may be disrupted due to overcrowding, because of blocked streets and sidewalks, or because the system is not functioning at all. The movement of people during an evacuation is critical, but many people with disabilities cannot use traditional, inaccessible transportation.

**Action Steps: Evacuation with Accessible Vehicles**

Identify accessible modes of transportation that may be available to help evacuate people with disabilities during an emergency. For instance, some communities have used lift-equipped school or transit buses to evacuate people who use wheelchairs during floods.

![A lift-equipped school bus is used to evacuate an individual using a wheelchair and her family](image)

**SHELTERING**

When disasters occur, people are often provided safe refuge in temporary shelters. Some may be located in schools, office buildings, tents, or other areas. Historically, great attention has been paid to ensuring that those shelters are well stocked with basic necessities such as food, water, and blankets. But many of these shelters have not been accessible to people with disabilities. Individuals using a wheelchair or scooter have often been able somehow to get to the shelter, only to find no accessible entrance, accessible toilet, or accessible shelter area.

**Action Steps: Accessible Shelters**
Survey your community’s shelters for barriers to access for persons with disabilities. For instance, if you are considering incorporating a particular high school gymnasium into your sheltering plan, early in the process you should examine its parking, the path to the gymnasium, and the toilets serving the gymnasium to make sure they are accessible to people with disabilities. If you find barriers to access, work with the facility’s owner to try to get the barriers removed. If you are unable to do so, consider another nearby facility for your community sheltering needs.

A shelter with accessible features including parking, drop-off area, entrance, toilet rooms, and sleeping areas.

Until all of your emergency shelters have accessible parking, exterior routes, entrances, interior routes to the shelter area, and toilet rooms serving the shelter area; you should identify and widely publicize to the public, including persons with disabilities and the organizations that serve them, the locations of the most accessible emergency shelters.

Shelter staff and volunteers are often trained in first aid or other areas critical to the delivery of emergency services, but many have little, if any, familiarity with the needs of people with disabilities. In some instances, people with disabilities have been turned away from shelters because of volunteers’ lack of confidence regarding the shelter’s ability to meet their needs. Generally, people with disabilities may not be segregated or told to go to “special” shelters designated for their use. They should ordinarily be allowed to attend the same shelters as their neighbors and coworkers.

Action Steps: Input on Shelter Planning and Staff Training
Invite representatives of group homes and other people with disabilities to meet with you as part of your routine shelter planning. Discuss with them which shelters they would be more likely to use in the event of an emergency and what, if any, disability-related concerns they may have while sheltering. Develop site-specific instructions for your volunteers and staff to address these concerns.

A individual who uses a wheelchair sits on a cot that is placed against a wall. The height of the bed and the wheelchair seat are of similar height making it possible for this person to transfer from the wheelchair to the bed.
Many shelters have a “no pets” policy and some mistakenly apply this policy to exclude service animals such as guide dogs for people who are blind, hearing dogs for people who are deaf, or dogs that pull wheelchairs or retrieve dropped objects. When people with disabilities who use service animals are told that their animals cannot enter the shelter, they are forced to choose between safety and abandoning a highly trained animal that accompaniess them everywhere and allows them to function independently.

Action Steps: Service Animals

Adopt procedures to ensure that people with disabilities who use service animals are not separated from their service animals when sheltering during an emergency, even if pets are normally prohibited in shelters. While you cannot unnecessarily segregate persons who use service animals from others, you may consider the potential presence of persons who, for safety or health reasons, should not be with certain types of animals.
A man using a wheelchair arrives at a shelter with his family and service animal.

A woman has a service animal lying on the floor next to her cot.

Individuals whose disabilities require medications, such as certain types of insulin that require constant refrigeration, may find that many shelters do not provide refrigerators or ice-packed coolers. Individuals who use life support systems and other devices rely on electricity to function and stay alive and, in many cases, may not have access to a generator or other source of electricity within a shelter.

Action Steps: Medications, Refrigeration, and Back-up Power

Ensure that a reasonable number of emergency shelters have back-up generators and a way to keep medications refrigerated (such as a refrigerator or a cooler with ice). These shelters should be made available on a priority basis to people whose disabilities require access to electricity and refrigeration, for example, for using life-sustaining medical devices, providing power to motorized wheelchairs, and preserving certain medications, such as insulin, that require refrigeration. The public should be routinely notified about the location of these shelters. In addition, if you choose to maintain a confidential registry of individuals needing transportation assistance, this registry could also record those who would be in need of particular medications. This will facilitate your planning priorities.
People who are deaf or hard of hearing may not have access to audible information routinely made available to people in the temporary shelters. Individuals who are blind or who have low vision will not be able to use printed notices, advisories, or other written information.

Action Steps: Communications

Adopt procedures to provide accessible communication for people who are deaf or hard of hearing and for people with severe speech disabilities. Train staff on the basic procedures for providing accessible communication, including exchanging notes or posting written announcements to go with spoken announcements. Train staff to read printed information, upon request, to persons who are blind or who have low vision.
RETURNING HOME

The needs of individuals with disabilities should be considered, too, when they leave a shelter or are otherwise allowed to return to their home. If a ramp has been destroyed, an individual with a mobility impairment will be unable to get into and out of the house. In case temporary housing is needed past the stay at the shelter, your emergency response plan could identify available physically accessible short-term housing, as well as housing with appropriate communication devices, such as TTY’s, to ensure individuals with communication disabilities can communicate with family, friends, and medical professionals.

Action Steps: Planning

Identify temporary accessible housing (such as accessible hotel rooms within the community or in nearby communities) that could be used if people with disabilities cannot immediately return home after a disaster if, for instance, necessary accessible features such as ramps or electrical systems have been damaged.
A portable trailer provides temporary accessible housing for an individual who uses a wheelchair and his family. In addition to accessible features inside, the trailer also has an accessible entrance, accessible parking, and the trailer is located on an accessible route to other site features in the mobile home park.

A man using a wheelchair and his service animal enters temporary accessible housing provided in an apartment building.
CONTRACTING FOR EMERGENCY SERVICES

Many local governments provide emergency services through contracts with other local governments or private relief organizations. These entities may not fully understand the role they need to play in meeting your obligation to provide accessible emergency services.

Action Steps: Contracting for Emergency Services

Make sure that contracts for emergency services require providers to follow appropriate steps outlined in this document. Review the terms of these contracts on a regular basis to ensure that they continue to meet the accessibility needs of people with disabilities. Provide training to contractors so that they understand how best to coordinate their activities with your overall accessibility plan for emergency services.

Emergency Preparedness Guide -- PDF (print version, 3.5mb)

Emergency Preparedness Guide -- PDF (screen version, 1.5mb)

ADA Homepage

Last updated: October 09, 2008
Americans with Disabilities Act

ADA Guide for Small Towns
A guide for small local governments including towns, townships, and rural counties.

Reproduction

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Additional copies of this publication may be obtained by calling the ADA Information Line at 800-514-0301 (voice) 800-514-0383 (tty) or by visiting the Department's ADA Home Page on the World Wide Web (www.usdoj.gov/crt/ada/adahom1.htm).
Disclaimer

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a legal interpretation of the statute.

First printing, March 2000

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Introduction
The Americans with Disabilities Act gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in employment, transportation, State and local government services, telecommunications, and in the goods and services provided by businesses.

Small towns offer a variety of essential programs and services that are fundamental to the public and to everyday American life. Although the range of services offered by small towns varies, it is essential that people with disabilities have the opportunity to participate in the programs and services that towns offer. Applying for a building permit or business license, playing ball in the local park, marching in the Memorial Day parade, attending an annual street festival or a town meeting, or calling 9-1-1 for emergency police, fire, or rescue all are typical town programs, activities or services covered by the Americans with Disabilities Act or ADA.

The ADA gives people with disabilities an equal opportunity to participate in the mainstream of public life offered to all Americans. This guide presents an informal overview of some basic ADA requirements and provides cost-effective tips on how small towns can comply with the ADA.

Part One: The ADA’s Requirements for Small Towns

Title II of the ADA applies to State and local governments, including towns and townships, school districts, water districts, special purpose districts, and other small local governments and instrumentalities. It prohibits discrimination on the basis of disability in all services, programs, and activities provided by towns. Thus, people with disabilities must have an equal opportunity to participate in and benefit from a town's services, programs, and activities. To accomplish this, the ADA sets requirements for town facilities, new construction and alterations, communications with the public, and policies and procedures governing town programs, services, and activities.

Footnote
1 The term "towns" is used in this publication to refer to all small local governments, towns, and townships. Please remember that title II applies to all State and local government entities, regardless of size, including State governments, local governments, special government entities such as transportation authorities, school districts, water districts, and other special purpose districts.
A ramp located next to the stairs to this town hall provides an accessible entrance.

1. Existing Facilities: Program Accessibility

When programs, services, or activities are located in facilities that existed prior to January 26, 1992, the effective date of title II of the ADA, towns must make sure that they are also available to persons with disabilities, unless to do so would fundamentally alter a program, service, or activity or result in undue financial or administrative burdens (see page 8). This requirement is called program accessibility. When a service, program, or activity is located in a building that is not accessible, a small town can achieve program accessibility in several ways. It can:

- relocate the program or activity to an accessible facility
- provide the activity, service, or benefit in another manner that meets ADA requirements, or
- make modifications to the building or facility itself to provide accessibility.

Thus, to achieve program accessibility, a small town need not make every existing facility accessible. It can relocate some programs to accessible facilities and modify other facilities, avoiding expensive physical modifications of all town facilities.
Physical modifications to provide program accessibility included parking spaces, the public toilet facility and an accessible route to the ocean overlook.

Example
A town holds its annual town meeting in an inaccessible location, the second floor of the two-story town hall that has no elevator. The town council considers installing an elevator in the building as well as replacing the existing town hall with a new, fully accessible building, but determines that the town's limited financial resources will not allow either of these approaches. Instead, the town officials decide to hold the town meetings, as well as other public meetings where large numbers of the public are expected to attend, in the accessible auditorium of its local high school. The town officials also decide to move smaller meetings, which are periodically held on the second floor of the town hall, to the school auditorium, when they receive a request within 24 hours of a meeting.

Example
The town library is a historic structure that is listed on the State historic register. The two entrances to the facility each have four steps and no accessible entrance is provided. The town consults with an architect to determine if an accessible entrance can be provided and is told that a ramp or lift cannot be added to either entrance without a significant change to the exterior of the building. After reviewing the ADA requirements, the town learns that qualified historic buildings and facilities are not required to take any action that would threaten or destroy the historic significance of a historic property. The State historic preservation office is consulted and it determines that the exterior cannot be modified. Because physical modifications to the entrances cannot be made, the town changes its policies and provides access to the library services in an "alternate manner" upon request. Library staff are trained to take requests over the telephone, to look up information for individuals with disabilities who cannot use the library, to provide information over the telephone, and to provide curbside service for books and library publications or to mail items to individuals upon request. Library staff may also meet with an individual in another accessible location when the telephone service is not effective. The library publicizes a telephone number for requesting these alternate services in its publications and announcements.
Library staff provide curbside services because the library facility cannot be made accessible.

Example
A town-operated two story historic house museum, which dates from 1885, provides exhibition and instructional programs for the public. The focus of the program is the exhibition of a typical 19th century Victorian house.

The self-evaluation determines that the house is not accessible. After considering the options for providing access to the programs and services, the town decides that it is not possible to move the museum programs to other accessible locations because the historic house itself is a critical part of the historic house program. The town develops plans to alter the facility to provide physical access to the first floor. These alterations are planned in compliance with the historic preservation requirements of the ADA Standards.

After reviewing the alterations with the State historic preservation office, the town determines that the second floor cannot be made accessible without threatening the unique features and historic significance of the house. Because the town must consider alternatives to structural changes in these instances, the town establishes a policy to locate all temporary programs on the first floor. In addition, the town documents the second floor spaces and content using video or other innovative solutions and provides an accessible viewing area on the first floor.

Example
The town's police station has one step at the public entrance and there is no accessible entrance available. After considering its options for providing program accessibility, the town decides to modify the facility to provide access rather than relocate the police programs or services. After review of the programs and services provided at the station, the town determines that the public entrance, lobby, and service counter need to be accessible to provide program accessibility. Therefore, alterations are limited to those items necessary to achieve program accessibility. In this case, it includes providing a van-accessible parking space in the parking lot, an accessible route from the parking space to the modified public entrance, and an accessible service counter inside the police station.
A town chose to alter its police station rather than move its programs and services to another accessible location.

When a town becomes aware that a program is not accessible and plans to alter a facility to provide access, it may be necessary to temporarily relocate a program, service, or activity to a temporary accessible location or to temporarily offer the service in an alternate manner.

This temporary solution assures that the service, program, or activity is accessible during the time the alterations are planned and being implemented.

**Example**
The public toilet facilities at the town recreation area are not accessible. After consideration of whether to modify the facilities or to relocate the programs held at the recreation area, the town decides to alter the toilet facilities and the walkway leading to them. While the fundraising is done, alterations planned, and the work completed, the town provides temporary portable toilet facilities that are accessible.

When choosing a method of providing program access, a public entity must give priority to the one that results in the most integrated setting appropriate to encourage interaction among all users, including individuals with disabilities. In addition, a town may offer additional activities or services so an individual with a disability can more fully participate in, or benefit from, a program, service, or activity. However, when such special activities or services are provided for people with disabilities, the town must permit a person with a disability to choose to participate in services, programs, or activities that are not different or separate.

**Example**
The local town pool provides a swimming program for people with disabilities that includes additional staff who provide individualized instruction. A person with a disability participates in the program. The person applies to attend group swimming lessons that are open to the public even though these lessons do not provide specialized instruction. The town must permit the individual with a disability to participate unless doing so would fundamentally alter the program.
Because program accessibility may be provided in an accessible part of a facility when the remainder of the facility is not accessible, the public must be informed of the location of accessible features. Signs should direct the public to the location of accessible elements and spaces, including the location of accessible parking, the accessible entrance to a facility, and accessible toilet rooms. In addition, a town may issue a brochure or pamphlet with a map indicating the town's accessible features.

**Example**
A town hall has two sets of public toilet rooms. One set has been altered and is accessible, and the other set is not accessible. The town installs signage at the inaccessible toilet rooms directing people to the accessible toilet rooms.

**Sign at an inaccessible entrance provides directions to the nearest accessible entrance**

Towns making modifications to a building or facility to provide program accessibility must comply with the ADA Standards for Accessible Design (ADA Standards) or the Uniform Federal Accessibility Standards (UFAS).

**Example**
The town outdoor recreation area has a ball field, parking lot, and a building with public toilets. Town officials note that the parking lot does not have accessible parking spaces and the toilet facilities are not accessible. The town decides to provide accessible parking spaces in the part of the lot closest to the route to the ball field by restriping that section of the parking lot, installing signage designating the accessible parking spaces, and by making sure the accessible parking spaces are on an accessible route to the recreation area. The town also modifies the toilet facilities to make them accessible. All alterations are done in compliance with the ADA Standards and signs are provided to identify the accessible toilet facilities.
Alterations done to provide program accessibility must comply with the ADA Standards.

2. New Construction and Alterations

New Construction
ADA requirements for new construction have been in effect since January 1992. New buildings and facilities must comply with the new construction provisions of the ADA Standards for Accessible Design (without the elevator exemption) or the Uniform Federal Accessibility Standards (UFAS). This requirement includes facilities that are open to the public and those that are for use by employees.

The ADA Standards for Accessible Design (ADA Standards) were first issued in 1991 and have been selected as the ADA design standard by many towns. Although towns now have the option to choose either the ADA Standards or the UFAS, it is likely that in the future the ADA Standards will become the only design standard under the ADA. Because ADA requirements for new construction and alterations do change from time to time, towns should become familiar with any new design and construction requirements before a project starts (see Resources for free information sources).

Public toilets at a park were built to comply with the new construction requirements of the ADA Standards.
Alterations and Additions
When a building or facility is renovated or altered or added to for any purpose, the alterations or additions must comply with the ADA Standards. In general, the alteration provisions are the same as the new construction requirements except that deviations are permitted when it is not technically feasible to comply. Additions are considered an alteration but the addition must follow the new construction requirements. When existing structural and other conditions make it impossible to meet all the alteration requirements of the ADA Standards, then they should be followed to the greatest extent possible.

Basic Requirements for Alterations

- Any alteration that affects the usability of a building or facility must comply with the requirements of the ADA Standards unless technically infeasible to do so. Alterations can be as limited as the replacement of a fixture or element, such as a lavatory, toilet, or piece of door hardware.
- When an element is replaced, the new element must comply with the ADA Standards if the minimum requirements for accessibility under the ADA have not already been met.

Alterations to existing town buildings follow the alteration requirements of the ADA Standards

When a town alters an area of a facility that contains a primary function area, the town has an additional obligation. The town is also responsible for making the path of travel to the altered area (room or wing), as well as the toilet rooms, drinking fountains, and public telephones serving the altered area accessible. Primary function areas are those areas of a building that include the primary spaces for which the building was constructed (for example offices or meeting areas in a town hall, locker rooms in an athletic facility, or classrooms in a school or training center). The amount of money the town must spend to provide an accessible path of travel is limited to 20% of the overall cost of the alterations. If the path of travel
alterations can be done for less than the 20% limit, then only that expenditure is required. If all the
required accessible features are already provided then no additional expenditure is needed.

- When a qualified historic facility is altered, an exception to the alteration requirements of the
  ADA Standards may be used if the alteration threatens to destroy the historic significance of the
  building or facility. In these situations, special provisions in the Standards may be used for the
  element or space that would be threatened. In almost all situations, accessible design can be used
  without significantly impairing the historic features of the facility.
- The ADA Standards have specific requirements for additions. Additions, which include an
  expansion, extension or increase of the gross floor area of a building or facility, are considered an
  alteration to a facility but the area that is added must comply with the new construction
  requirements. Each addition that affects or could affect the usability of an area containing a
  primary function area must meet the path of travel requirements (see above).

3. Maintenance of Accessible Features

Towns must maintain in operable working condition those features that are necessary to provide access to
services, programs, and activities -- including elevators and lifts, curb ramps at intersections, accessible
parking spaces, ramps to building or facility entrances, door hardware, and accessible toilet facilities.
Isolated or temporary interruptions in service or access are permitted for maintenance or repairs.

Example
When weather conditions such as snow and ice limit or prevent access to services, programs, and
activities, a town that houses programs in an accessible facility will have to maintain access to ensure that
those programs are accessible. Maintenance of accessible features would include the removal of snow
from accessible parking spaces, parking space access aisles, the accessible route to the accessible
entrance, and accessible entrances. Although temporary interruptions in services due to bad weather are
expected, alternate services should be provided if snow and ice cannot be cleared in a timely manner.

Clearing snow from accessible parking spaces and the accessible route may be essential to provide access to programs, services or activities.
Example
A town building that was built before the ADA went into effect has a lift that provides access from inside the building to the library. The town must maintain the lift in working condition to assure that the public has access to the library programs. If the lift is out of order, repairs must be made in a timely fashion. Until the repairs are made, the town should provide alternate service for wheelchair users and others with disabilities who can no longer gain access to the library. These services may include retrieval of library materials by staff who will meet with an individual in an accessible location.

A lift provides access to the programs and services held in this town library. If the lift is out of service, alternate services are provided in an accessible location until the lift is repaired.

4. Effective Communication

Towns must take appropriate steps to ensure that communications with members of the public, job applicants, and participants with disabilities are as effective as communications with others unless it is an undue financial or administrative burden to do so or it would result in a fundamental alteration (see page 8) in the nature of its program or activity.

Achieving effective communication often requires that towns provide auxiliary aids and services. Examples of auxiliary aids and services include qualified sign language interpreters, assistive listening devices, open and closed captioning, notetakers, written materials, telephone handset devices, qualified readers, taped texts, audio recordings, Brailled materials, materials on computer disk, and large print materials.
A sign language interpreter is one type of auxiliary aid or service that may be requested.

Towns must provide appropriate auxiliary aids and services where they are necessary to achieve an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by or for the town. The town must give primary consideration to the type of auxiliary aid requested by a person with a disability. However, the town may provide a different type of aid if it can show that it is an effective means of communication.

Example
A town prepares to hold its annual town meeting in the high school gymnasium. A request is made through the meeting coordinator for real time captioning to be provided for a person who is deaf. Real time captioning displays the spoken content from a meeting or a speech on a large television screen as text. The town gives primary consideration to the request but after discussing alternatives for providing effective communication with the individual who made the request, the town learns that the individual is fluent in American Sign Language (ASL). The town offers to provide a qualified ASL sign language interpreter for the town meeting because it has determined from discussions with the individual that the interpreter can provide effective communication.

Determination of an undue financial burden or a fundamental alteration can only be made by the head of the town government or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination of an undue burden must be based on all resources available for use in the program, service, or activity. When it is not possible to provide a particular type of auxiliary aid to achieve effective communication due to an undue burden or fundamental alteration, the town must take any other action that would not result in such burdens or fundamental alteration, but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

If a town communicates with applicants and beneficiaries by telephone, it should ensure that an effective telecommunication system such as communication using the relay system or a TTY (or TDD) be used to communicate with individuals who are deaf, hard-of-hearing or who have speech disabilities. A TTY has a keyboard and visual display for non-verbal communication with another TTY user or a relay system.
operator. The relay system is provided in each State and permits telephone communication between voice handsets and individuals using a TTY.

A town can choose to provide a TTY without significant expense. Some towns have decided to install a portable TTY next to a public pay telephone and to anchor the portable unit to a shelf. Electrical connections are enclosed to protect against accidental disconnection of power.

Requirements for effective communications also apply to "telephone emergency services" that provide a basic emergency service, such as police, fire, and ambulance, that are provided by public safety agencies, including 9-1-1 (or, in some cases, seven-digit) systems. Direct, equal access must be provided to all services included in the system, including services such as emergency poison control information. Where direct access is provided to callers, direct access by TTY users means the telephone emergency service cannot use a relay system or transfer all TTY calls to one operator while other callers have access to all available operators (for more information, see the Department's publication, Access for 9-1-1 and Telephone Emergency Services Under the Americans with Disabilities Act).

A portable TTY mounted on a shelf located next to a pay telephone can provide a low-cost TTY solution

5. Policies, Practices and Procedures

Towns must make reasonable modifications to policies, practices, and procedures to avoid discrimination against individuals with disabilities. While this requirement applies to all policies, practices, and procedures of the town, the town does not have to make modifications that would result in a fundamental alteration in the program, service, or activity or result in a direct threat to the health or safety of others. A direct threat is a significant risk that cannot be eliminated or reduced to an acceptable level by the town's
modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services. The public entity's determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability (see The ADA Title II Technical Assistance Manual).

The self-evaluation typically includes a review of policies, practices, and procedures (see page 10, Processes for Complying with the ADA). Periodic review after the self-evaluation may be done to maintain compliance with the ADA. A town can choose how it wants to conduct a review of policies and practices that govern the administration of the town's programs, activities, and services. Towns that have already done a self-evaluation do not have to do another one.

Review of policies, practices, and procedures also applies to telephone emergency services, such as 9-1-1, where policies must ensure direct access to individuals who use TTY's and computer modems.

A mother with her service animal leads her children to the town pool. Policies and procedures that restrict or prohibit service animals may violate the ADA.

Example
A town pool requires that adults provide photo identification to verify residency before using the pool or participating in pool programs. During review of town policies, practices, and procedures, the town determines that the pool identification policy, which requires that a driver's license with a photo be presented to gain admission, may discriminate against people with disabilities who may not have a driver's license. The town changes its policy to permit other forms of identification to verify residency.

6. Processes for Complying with the ADA

Towns that have not already conducted a self-evaluation or updated a previous self evaluation conducted under Section 504 of the Rehabilitation Act must do so. The self-evaluation is a review of all town services, programs, and activities to identify any physical barriers or policies, practices, or procedures that may limit or exclude participation by people with disabilities. The self-evaluation includes permanent, temporary, and periodic services, programs, and activities. Each town should look at what services, programs, or activities are offered and in what location.
Any policies, practices, or procedures that may limit or exclude individuals with disabilities must be reasonably modified, unless doing so would result in a fundamental alteration in the nature of the service, program, or activity. The self-evaluation should identify changes to policies to be implemented. It should also identify any discriminatory policies, practices, and procedures that cannot be reasonably changed without resulting in a fundamental alteration.

The self-evaluation also identifies problems with the accessibility of facilities and establishes recommendations for providing program accessibility (which may include relocation to an accessible facility). It may also suggest short-term and long-term strategies to provide access to people with disabilities.

An emergency call box located in a rural area is mounted in an accessible location and can be used with or without speech to provide effective communication.

Towns that completed a self-evaluation to comply with section 504 of the Rehabilitation Act only have to bring the 504 self-evaluation up to date with ADA requirements by evaluating the services, programs, and activities that have changed. However, because considerable time has passed since most section 504 self-evaluations were done, it would be best to conduct a new self-evaluation.

Provide public notice about ADA requirements
A small town must provide notice to the public about its ADA obligations and about accessible facilities and services in the town. The notice must inform the public about the ADA's nondiscrimination requirements. It may also describe how the public or employees may contact specific town officials about problems with accessibility and the need for effective communication. The information must be accessible to the public, including people who have disabilities that affect communication, such as blindness, low vision, deafness, and hearing loss. Although no specific method is required to reach the public, notice can be provided in more than one format and by using more than one type of media, such as the town's website, print, radio, or television.
Other obligations for larger towns with 50 or more employees
Although the ADA only requires State and local governments with 50 or more employees to take the following measures, towns with less than fifty employees may want to consider following the same or similar steps because the process may make it easier to comply with the ADA.

**a. Designate an individual to coordinate ADA compliance**
Responsibilities for the ADA coordinator may include conducting the self-evaluation and developing the transition plan (see below), handling requests for auxiliary aids and services, providing information about accessible programs and services, and serving as a local resource to the town or township. The ADA coordinator may also have responsibility for working with the mayor or town council to ensure that new facilities or alterations to town facilities meet ADA requirements. In some communities, this individual also receives complaints from the public and works to resolve them.

**b. Develop a transition plan**
If a town with 50 or more employees decides to make physical changes to achieve program access it must develop a written plan that identifies the modifications that will be made. The plan should include timelines for completing these modifications. Interested parties, including people with disabilities and organizations representing people with disabilities, must at a minimum have an opportunity to participate in the development of the plan by submitting comments. A copy of the plan and a copy of the self-evaluation must be available for public inspection for three years after completion.

Installation of curb ramps is one of the items included in the transition plan. This type of curb ramp is used when some type of barrier prevents pedestrians from entering the curb ramp from the side.

**c. Develop a grievance procedure**
Towns with fifty or more employees must have an ADA grievance procedure. A grievance procedure provides people who feel they have been discriminated against because of their disability, or others who feel they have been discriminated against because they have a friend or family member with a disability, with a formal process to make their complaint known to the town. This procedure encourages prompt and
equitable resolution of the problem at the local level without having to force individuals to file a Federal complaint or a lawsuit.

Part Two -- Typical Issues: Program Accessibility and Effective Communication

A. Accessible Parking

In new construction and in alterations, accessible parking must be provided whenever public parking is provided. Towns may wish to add accessible parking when public parking is not provided to provide access to facilities where programs, services, or activities are located. Accessible parking spaces have a number of features that make it possible for people with disabilities to get into or out of a vehicle.

Accessible Parking Spaces for Cars

Accessible parking spaces for cars have at least a 60 inch-wide access aisle located adjacent to the designated parking space. The access aisle is just wide enough to permit a person using a wheelchair to enter or exit the car. These parking spaces must be located on level ground and identified with a sign mounted in front of the parking space high enough so it is visible when a vehicle is parked.

Features of Accessible Parking Spaces for Cars

Van-Accessible Parking Spaces

One of every eight accessible parking spaces, but always at least one, must be accessible for vans with a side-mounted lift. If only one accessible space is provided, it must be a van-accessible space.

Van-accessible parking spaces incorporate the same requirements as accessible parking spaces for cars and have three additional features for vans:

- a wider access aisle (96 inch-wide) to accommodate a wheelchair lift;
• vertical clearance to accommodate van height at the van parking space, the adjacent access aisle, and on the vehicular route to and from the van-accessible space,
• an additional sign that identifies the parking spaces as "van accessible."

When accessible parking spaces are added in an existing parking lot, towns must locate the accessible spaces on the most level ground close to the accessible entrance. An accessible route must always be provided from the accessible parking spaces to the accessible entrance.

The ADA Standards have technical requirements for parking lots and garages but no technical requirements for the design of on-street parking.

For more information about accessible parking, see the ADA Standards and other publications listed in Part III: Resources (page 20).

Three Additional Features for Van-Accessible Parking Spaces

B. Accessible Route

When a walk, pathway, or pedestrian route is necessary to provide public access to a program, service, or activity, an accessible route must be provided. An accessible route is an unobstructed pedestrian path that connects accessible elements and spaces such as accessible parking spaces, accessible entrances, accessible meeting rooms, accessible toilet rooms, etc. It can be a walkway, hallway, part of a courtyard, or other pedestrian space. An accessible route must be at least 36 inches wide, have no abrupt vertical changes in level (such as a step), have a running slope no more than 1:12 in most cases, and meet other requirements for cross slope, surface conditions, vertical height, and passing spaces. The width of an accessible route can be as narrow as 32 inches wide, such as at a doorway or a narrow section of hallway, but only for a distance up to 24 inches long.
An accessible route connects accessible parking (right) with the accessible entrance.

C. Accessible Entrance

If entering a facility is necessary to participate in or benefit from a program, service, or activity, then that facility must have an accessible entrance and the accessible entrance must be on an accessible route. The accessible route must connect one or more (exterior) site entry points (such as parking, a public sidewalk, or a public transportation stop) with an accessible entrance. The accessible entrance must also connect to an interior accessible route leading to the space or spaces where the program is located.

An accessible entrance must have an accessible door or doorway. If a door is provided, there must be maneuvering space on the pull and push sides of the door to permit a person using a wheelchair to open the door and then move through the door opening. The clear width of the opening must be at least 32 inches wide and accessible door hardware (handle and latch) must be provided. If a door closer is provided, it must be adjusted so the door will not close too quickly.

A historic town building added a ramp, walkway, and modified an entrance to provide access

Although it is best to have the accessible entrance be the same one used by most of the public, existing conditions may prevent modification of the main entrance resulting in use of a secondary or side entrance as the accessible entrance. It may also be necessary to use a secondary entrance if only one part of the building is accessible. Where a secondary or side entrance provides access, signs should be provided at inaccessible entrances to direct the public to the nearest accessible entrance.
A plan view of an accessible door

D. Curb Ramps at Intersections

Pedestrian walkways or sidewalks that are the responsibility of the town often play a key role in providing access to government programs and services and to the goods and services offered to the public by private businesses. When walkways cross a curb at intersections, a ramp or sloped surface is needed. The title II regulations set requirements for curb ramps at intersections. Whenever a town constructs a new road and sidewalk or alters existing roads and sidewalks, it must install curb ramps. In addition, the ADA requires that towns evaluate its existing system of sidewalks and develop a schedule to provide curb ramps where pedestrian walkways cross curbs. Because a town will not be able to install curb ramps at all town streets right away, the town's plan for curb ramp installation should set priorities for which streets require curb ramps. Towns must give priority to walkways serving State and local government offices and facilities, bus stops and transportation services, private businesses offering goods and services to the public, and employees, followed by walkways serving residential areas.

Any curb ramps that are installed must comply with the ADA Standards. In areas with hilly terrain or other site constraints, towns should follow the ADA Standards to the greatest extent feasible.

To achieve or maintain program accessibility, a town should develop procedures to allow the public to request that curb ramps be installed at specific intersections frequented by people with disabilities, including residents, employees, or visitors.
Curb ramps are needed when walkways cross a curb at an intersection. This type of curb ramp has flared sides and must be used when pedestrians may enter or exit the curb ramp from the side.

E. Alternate Services

A town can make its services, programs, or activities accessible by relocating them to an accessible site or offering them in an alternate way that is accessible. A town should consider the integration requirements of the ADA, which require that priority be given to measures that will provide the service, program, or activity in the most integrated setting appropriate. For small towns, alternate service may include meeting with an individual with a disability in his or her home to fill out specific forms if the town office is not accessible. It may also include curb service to pick up or deliver an item. However, in some cases alternate service is not appropriate. If a town meeting is scheduled to be held on the second floor of a building without an elevator and a person using a wheelchair wishes to attend the meeting, the meeting should be relocated to an accessible space, unless it would result in undue financial or administrative burdens. Making the person sit by themselves on the first floor and watch the meeting on a television monitor or having them watch the meeting at home is not a desirable alternative because it does not give the person with a disability an equal opportunity to interact with officials and other participants.

F. Library Services

Library services are an example of programs and services offered by many towns. If a library facility or building is not accessible, these services may be offered in a different accessible library facility, in another accessible facility nearby, or in an alternate manner. Some towns with only one library may prefer to modify the entrance to the library and other key elements to provide access. Others that may have a facility that is difficult to make accessible or lack the resources to make essential physical changes may choose to offer the programs and services in an alternate accessible location. What is important is that the same services be available to individuals with disabilities as are offered to others such as doing research, using the card catalog or cataloging device, reading or reviewing items usually held in reserve or special collections, and returning loaned items.
An individual uses a call button to request assistance from library staff of the bookmobile.

If a library provides program accessibility through alternate means it must have policies that permit staff to carry out this policy. The policies must include procedures that permit the public to make requests for the alternate location or services. In many cases, however, providing basic physical accessibility to the library facility is preferred in meeting the obligation to provide services in the most integrated setting appropriate.

G. Parks and Recreation Programs

A town's recreational programs or activities, such as those offered at the town baseball or football field or at the town pool, play an important part in the life of a community. These programs, services, and activities are among those that the town should review as part of the self-evaluation to determine if any physical or policy barriers exist that may keep people with disabilities from participating. If a town decides to modify facilities to provide program accessibility and has more than one facility available (such as when several ball fields are provided) only some of the facilities may need to be accessible. However, when only some of the ball fields are accessible, the scheduling policies for their use will need to accommodate requests for accessible fields, player areas, or spectator seating (if provided).

When the facilities are built or altered, they must comply with the ADA Standards, which have specific technical requirements for elements and spaces, such as accessible parking spaces, accessible routes, toilet facilities, public telephones, and spectator seating areas. For elements and spaces without specific technical standards, such as ball fields or playing areas, the town should use the Standards as a guide, providing a reasonable number, but at least one, that is accessible and providing an accessible route to the area of play and the spectator areas.
A town playground with an accessible route that provides access to a play area.

H. Accessible Print Material

Public documents such as town annual reports, promotional brochures, and other documents, such as tax bills, license applications and other printed information may need to be provided in an alternate accessible format to provide effective communication for individuals who are blind or visually impaired. Alternate formats may include materials in Braille, large print, files on computer disk that can be used in a personal computer, or an audiotape recording of the print document. Priority should be given to the type of format that has been requested unless the town determines that another format is effective or that providing the one requested would result in undue financial or administrative burdens or a fundamental alteration in the nature of the program. A town should publish a contact number for the public to request an accessible format or other auxiliary aid or service.

I. Police Services

Local police services are covered by the ADA, including investigations, interrogation, arrest, and transportation. Program accessibility requirements apply to the services and programs offered to the public, including those offered at a local police station. Effective communication requirements also apply to communication with the public, including individuals suspected of criminal activity.

If a town has a police station, jail, or holding facility, or other public police facility, the town should include services, programs, and activities that are offered in these facilities in its self-evaluation. To achieve program accessibility, it may be possible to share some accessible facilities with other nearby towns or government entities or to offer the service, program, or activity in another accessible location or manner. Vehicles used to transport suspects or prisoners should also be included in the self-evaluation. If a town does not have an accessible vehicle available for transporting suspects or prisoners, the town should identify a source for an accessible vehicle, such as an accessible school bus, taxi with a wheelchair lift, or an accessible vehicle from a nearby town.
A police officer and a deaf person communicate using a writing pad and pen.

J. Calling 9-1-1 and Other Emergency Services

Dialing 9-1-1 is the most familiar and effective way Americans have of finding help in an emergency. The ADA requires all telephone emergency services to provide direct, equal access to their services for people with disabilities who use a TTY.

Equal access means that TTY callers have an opportunity to obtain emergency services that is equal to that of callers who use voice handsets. The telephone emergency services provided for TTY callers must be handled in the same manner as those provided for individuals who make voice calls, in terms of response time, response quality, hours of operation, and all other features offered (e.g., automatic number identification, automatic location identification, automatic call distribution). There must be adequate numbers of TTY’s or equipment to answer TTY calls. If a town or township relies on another government entity to provide its 9-1-1 and telephone emergency services, it should inquire about the accessibility of the services (for more information see Access for 9-1-1 and Telephone Emergency Services Under the Americans with Disabilities Act).

K. Temporary Events

The ADA applies to both temporary and permanent services, programs, or activities of a town. Facilities and structures that are built or altered for temporary use must comply with the ADA Standards (except for construction trailers). In addition, the policies and operations for the event must meet the nondiscrimination requirements of the ADA. When planning temporary events such as a town festival or concert, the town should review ADA title II requirements2 and the ADA Standards. The Standards can provide guidance to help event planners place temporary accessible parking spaces in appropriate locations, provide an accessible route throughout the site, and provide other accessible features for food service, toilet facilities (including accessible portable toilets), assembly area seating, public telephones, etc., where such elements or facilities are provided for the public. It is very important to consider accessibility requirements when the event is in the planning stage so that accessible facilities can be identified and incorporated in a manner that does not require extensive construction or last-minute modifications.
Selected Accessible Features of Town Fair

- temporary curb ramp added where needed to provide an accessible route
- booths and vendors located on an accessible route
- sign language interpreters available for selected performances and programs
- accessible parking, accessible transit drop offs and stops (if provided) and an accessible route from these areas to the fair is provided

A town fair that was planned to provide accessible programs, services and activities

Effective communication requirements also apply to temporary events. It may be necessary to provide qualified sign language interpreters or other auxiliary aids and services as requested, such as print material in a large-print format or on computer disk. A town may choose when to provide interpreters and publicize a schedule for interpreters and other auxiliary aids and services. It should also provide auxiliary aids or services in response to individual requests, unless to do so would result in undue financial and administrative burdens. Promotional material for a temporary event should explain how the public can request a particular auxiliary aid or service and be informed of when specific auxiliary aids and services may be available.

When portable toilets are provided, at least one at each location must be accessible

Footnote

2 Private vendors and contractors should follow the ADA title III regulations which cover goods and services provided by private companies. For more information, see the ADA Guide for Small Businesses.
Part Three: Resources

Department of Justice ADA Information

To help State and local governments, including small local governments, understand and comply with the law, the Department of Justice established a technical assistance program to answer questions about the ADA. The Department of Justice has a toll-free ADA Information Line that provides access to ADA specialists during business hours. The ADA Information Line also provides twenty-four hours a day access to a fax-on-demand system for technical assistance materials that permits a caller to have the document sent to them by fax. Orders for publications sent by mail may be made twenty-four hours a day on the Information Line's voice mail system.

ADA Information Line -- 800-514-0301 voice and 800-514-0383 TTY

Another important source of ADA information is the Department's ADA Home Page on the World Wide Web. This extensive web site provides access to ADA regulations, all Department ADA technical assistance materials, including newly-released technical assistance material, proposed changes in the ADA regulations, and access to Freedom of Information Act materials including technical assistance letters. The web site also provides links to other Federal agencies with ADA responsibilities.

ADA Home Page -- www.ada.gov

The ADA and City Governments: Common Problems
A 9-page publication that compiles common problems with Title II compliance.

ADA Regulation for Title II, as printed in the Federal Register (7/26/91)
The Department of Justice's regulation implementing title II, subtitle A, of the ADA, which prohibits discrimination on the basis of disability in the services, programs, and activities provided by towns.

Title II Technical Assistance Manual (1993) and Supplements (Spanish edition available by mail)
A 30-page manual explaining what State and local governments must do to ensure that their services, programs, and activities are provided to the public in a non-discriminatory manner. Gives practical examples.

Department of Justice ADA Mediation Program
A 8-page publication describing the Department's ADA mediation program including locations of ADA mediators, and examples of successful mediation efforts.

ADA Regulation for Title III, including the ADA Standards for Accessible Design.
**ADA Information Services**
A 2-page list with the telephone numbers and Internet addresses of Federal agencies and other organizations that provide information and technical assistance to the public about the ADA.

**Enforcing the ADA: A Status Report from the Department of Justice**
A quarterly report providing timely information about ADA cases and settlements, building codes that meet ADA accessibility standards, and ADA technical assistance activities.

**Commonly Asked Questions About the ADA and Law Enforcement**
A 13-page publication explaining ADA requirements for ensuring that people with disabilities receive the same law enforcement services and protections.

**Access for 9-1-1 and Telephone Emergency Services**
A 10-page publication explaining the requirements for direct, equal access to 9-1-1 for persons who use teletypewriters (TTYs).

**ADA Guide for Small Businesses**
A 15-page booklet for businesses that provide goods and services to the public.

**Other Federal Agencies and Federal Grantees Providing Information**

**Department of Transportation**
Department of Transportation offers technical assistance on ADA provisions applying to public transportation.

ADA Assistance Line for information, questions and complaints
888-446-4511 (voice) -- TTY: relay service
202-366-2285 (voice) -- 202-366-0153 (TTY)

Transportation - documents and questions
202-366-1656 (voice) -- TTY: use relay service

Transportation - legal questions
202-366-4011 (voice) -- TTY: use relay service

Internet address -- [www.fta.dot.gov](http://www.fta.dot.gov)

**Equal Employment Opportunity Commission**
Equal Employment Opportunity Commission offers technical assistance on the ADA provisions applying to employment; also provides information on how to file ADA complaints.

Employment - questions
800-669-4000 (voice) -- 800-669-6820 (TTY)

Employment - documents
800-669-3362 (voice) -- 800-800-3302 (TTY)

Internet address -- www.eeoc.gov

**Access Board**

Access Board (or Architectural and Transportation Barriers Compliance Board) offers technical assistance on the ADA Accessibility Guidelines.

Documents and questions
800-872-2253 (voice) -- 800-993-2822 (TTY)

Electronic bulletin board -- 202-272-5448

Internet address -- www.access-board.gov

**Department of Housing and Urban Development**

Fair Housing Act: for questions or publications call Department of Housing and Urban Development.

Fair Housing accessibility questions
202-708-2333 (voice) -- 202-708-4112 (TTY)

Fair Housing publications
800-767-7468 (voice) -- TTY: use relay service

Internet address -- www.hud.gov

**Disability and Business Technical Assistance Centers (DBTACs)**

Department of Education funds ten regional centers to provide technical assistance on the ADA.

800-949-4232 (voice/TTY)

Internet address -- www.adata.org
Job Accommodation Network

The Job Accommodation Network (JAN) is a free telephone consulting service offering information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

800-526-7234 (voice & TTY)

Internet address -- http://janweb.icdi.wvu.edu/english

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The ADA and City Governments: Common Problems

Introduction
Access to civic life by people with disabilities is a fundamental goal of the Americans with Disabilities Act (ADA). To ensure that this goal is met, Title II of the ADA requires State and local governments to make their programs and services accessible to persons with disabilities. This requirement extends not only to physical access at government facilities, programs, and events -- but also to policy changes that governmental entities must make to ensure that all people with disabilities can take part in, and benefit from, the programs and services of State and local governments. In addition, governmental entities must ensure effective communication -- including the provision of necessary auxiliary aids and services -- so that individuals with disabilities can participate in civic life.

Curb ramps providing access to streets and sidewalks are a basic city service.

One important way to ensure that Title II's requirements are being met in cities of all sizes is through self-evaluation, which is required by the ADA regulations. Self-evaluation enables local
governments to pinpoint the facilities, programs and services that must be modified or relocated to ensure that local governments are complying with the ADA.

This document contains a sampling of common problems shared by city governments of all sizes that have been identified through the Department of Justice's ongoing enforcement efforts. The document provides examples of common deficiencies and explains how these problems affect persons with disabilities. The document is not intended to be comprehensive or exhaustive.

City programs held in this municipal gazebo are covered by the ADA.

For additional information about the Americans with Disabilities Act's Title II requirements, please contact the Department of Justice ADA Information Line. This free service provides answers to general and technical questions about ADA requirements and free ADA documents, such as Commonly Asked Questions about Title II of the Americans with Disabilities Act (ADA), Commonly Asked Questions about the Americans with Disabilities Act and Law Enforcement, Title II Highlights, Access for 9-1-1 and Telephone Emergency Services, the ADA Guide for Small Towns, and the ADA Standards for Accessible Design. You may reach the ADA Information Line at:

800-514-0301 (voice) or 800-514-0383 (TTY)

ADA information is also available on the Department's ADA Home Page on the World Wide Web at:


**Issue: "Grandfather" Clause or Small Entity Exemption**

**Common Problem:**

City governments may believe that their existing programs and facilities are protected by a "grandfather" clause from having to comply with the requirements of Title II of the ADA.
Small municipalities may also believe that are exempt from complying with Title II because of their size.

Result:

Because city governments wrongly believe that a "grandfather" clause or a small entity exemption shields them from complying with Title II of the ADA, they fail to take steps to provide program access or to make modifications to policies, practices, and procedures that are required by law. People with disabilities are unable to gain access to city facilities, programs, services, or activities because of a public entity's reliance on these common misconceptions.

Requirement:

There is no "grandfather" clause in the ADA. However, the law is flexible. City governments must comply with Title II of the ADA, and must provide program access for people with disabilities to the whole range of city services and programs. In providing program access city governments are not required to take any action that would result in a fundamental alteration to the nature of the service, program, or activity in question or that would result in undue financial and administrative burdens. This determination can only be made by the head of the public entity or a designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burden would result must be based on all resources available for use in a program. If an action would result in such an alteration or such burdens, a city government must take any other action that it can to ensure that people with disabilities receive the benefits and services of the program or activity. 28 C.F.R. § 35.150(a)(3).

Cities must remove barriers to provide alternative access to programs and services in existing facilities.
Similarly, there is no exemption from Title II requirements for small municipalities. While public entities that have less than 50 employees are not required to comply with limited sections of the Department of Justice's regulations, such as maintaining self-evaluations on file for three years and designating a grievance procedure for ADA complaints, no general exemption applies. All public entities, regardless of size, must comply with Title II's requirements. 28 C.F.R. § 35.104.

**Issue: Program Accessibility**

**Common Problem:**

City governments often have failed to ensure that the whole range of the city's services, municipal buildings, and programs meet Title II's program access requirements.

**Result:**

People with disabilities are unable to participate in the activities of city government, such as public meetings, unable to attend city functions, and unable to gain access to the city's various programs and services. If a municipal building such as a courthouse is inaccessible, people with disabilities who use wheelchairs are unable to participate in jury duty, attend hearings, and gain access to other services, because doorways are too narrow, restroom facilities are inaccessible, and steps are the only way to get to all or portions of a facility.

A ramp was installed to provide access to the city activities conducted in this facility.

**Requirement:**

Title II requires city governments to ensure that all of their programs, services, and activities, when viewed in their entirety, are accessible to people with disabilities. Program access is intended to remove physical barriers to city services, programs, and activities, but it generally does not require that a city government make each facility, or each part of a facility, accessible. For example, each restroom in a facility need not be made accessible. However, signage
directing people with disabilities to the accessible features and spaces in a facility should be provided. Program accessibility may be achieved in a variety of ways. City governments may choose to make structural changes to existing facilities to achieve access. But city governments can also pursue alternatives to structural changes to achieve program accessibility. For example, city governments can move public meetings to accessible buildings and can relocate services for individuals with disabilities to accessible levels or parts of buildings. When choosing between possible methods of program accessibility, however, city governments must give priority to the choices that offer services, programs, and activities in the most integrated setting appropriate. In addition, all newly constructed city facilities must be fully accessible to people with disabilities. 28 C.F.R. §§ 35.149, 35.150, 35.151, 35.163.

Issue: Historically Significant Facilities

Common Problem:

City governments may believe that they have no duty to make changes to historically significant buildings and facilities to improve accessibility for people with disabilities.

Result:

Many city programs, services, and activities are conducted in buildings that are historically significant. In addition, many cities operate historic preservation programs at historic sites for educational and cultural purposes. If no accessibility changes are made at these facilities and locations, individuals with disabilities are unable to visit and participate in the programs offered. For example, people who use wheelchairs would not be able to reach the courtroom or clerk's office located in a historic nineteenth century courthouse if no physical changes are made to achieve access.

Requirement:

Historically significant facilities are those facilities or properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law. Structural changes to these facilities that would threaten or destroy the historical significance of the property or would fundamentally change the program being offered at the historic facility need not be undertaken. Nevertheless, a city must consider alternatives to structural changes in these instances -- including using audio-visual materials to depict the inaccessible portions of the facility and other innovative solutions.
An accessible side entrance was added to this historic facility.

If alterations are being made to a historically significant property, however, these changes must be made in conformance with the ADA Standards for Accessible Design, ("the Standards"), 28 C.F.R. Part 36, § 4.1.7, or the Uniform Federal Accessibility Standards, ("UFAS") § 4.1.7, to the maximum extent feasible. If following either set of standards would threaten or destroy the historical significance of the property, alternative standards, which provide a minimal level of access, may be used. This decision must be made in consultation with the appropriate historic advisory board designated in the Standards or UFAS, and interested persons should be invited to participate in the decision-making process. 28 C.F.R. §§ 35.150(b)(2); 35.151(d); Standards § 4.1.7; UFAS § 4.1.7. If these lesser standards would threaten or destroy historically significant features, then the programs or services conducted in the facility must be offered in an alternative accessible manner or location.

**Issue: Curb Ramps**

**Common Problem:**

City governments often do not provide necessary curb ramps to ensure that people with disabilities can travel throughout the city in a safe and convenient manner.

**Result:**

Without the required curb ramps, sidewalk travel in urban areas is dangerous, difficult, and in some cases impossible for people who use wheelchairs, scooters, and other mobility aids. Curb ramps allow people with mobility impairments to gain access to the sidewalks and to pass through center islands in streets. Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination.

**Requirement:**
When streets and roads are newly built or altered, they must have ramps wherever there are curbs or other barriers to entry from a pedestrian walkway. Likewise, when new sidewalks or walkways are built or altered, they must contain curb ramps or sloped areas wherever they intersect with streets or roads. While resurfacing a street or sidewalk is considered an alteration for these purposes, filling in potholes alone will not trigger the alterations requirements. At existing roads and sidewalks that have not been altered, however, city governments may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so. Under program access, alternative routes to buildings that make use of existing curb ramps may be acceptable where people with disabilities must only travel a marginally longer route.

Curb ramps provide basic access at intersections and pedestrian crossings.

One way to ensure the proper integration of curb ramps throughout a city is to set a series of milestones for curb ramp compliance in the city's transition plan. Milestones are progress dates for meeting curb ramp compliance throughout the municipality. Milestones should occur on a regular basis throughout the course of the transition plan and must reflect a priority to walkways serving government buildings and facilities, bus stops and other transportation services, places of public accommodation, and business districts, followed by walkways serving residential areas. It also may be appropriate for a city government to establish an ongoing procedure for installing curb ramps upon request in both residential and nonresidential areas frequented by individuals with disabilities. 28 C.F.R. §§ 35.150(d)(2); 35.151(c). In setting milestones and in implementing a curb cut transition plan for existing sidewalks, the actual number of curb cuts installed in any given year may be limited by the fundamental alteration and undue burden limitations.

**Issue: Effective Communication**

**Common Problem:**
City governments often fail to provide qualified interpreters or assistive listening devices for individuals who are deaf or hard of hearing at public events or meetings. In addition, city governments often fail to provide materials in alternate formats (Braille, large print, or audio cassettes) to individuals who are blind or have low vision.

Result:

Individuals who are deaf or hard of hearing are unable to participate in government-sponsored events or public meetings and unable to benefit from city programs and services when they are not provided with appropriate auxiliary aids and services. Likewise, people who are blind or have low vision are unable to benefit from city government services when printed materials are the only means of communication available.

Requirement:

Title II requires that city governments ensure that communications with individuals with disabilities are as effective as communications with others. Thus, city governments must provide appropriate auxiliary aids and services for people with disabilities (e.g., qualified interpreters, notetakers, computer-aided transcription services, assistive listening systems, written materials, audio recordings, computer disks, large print, and Braille materials) to ensure that individuals with disabilities will be able to participate in the range of city services and programs. City governments must give primary consideration to the type of auxiliary aid or service that an individual with a disability requests. The final decision is the government's.

A sign language interpreter at a public meeting may be needed to provide effective communication for people who are deaf.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved and the needs of the individual. For example, sign language interpreters are not required for all interactions with people who are deaf or hard of hearing. Employees can often communicate effectively with individuals who are deaf or hard of hearing through standard written materials and exchange of written notes. For simple transactions like paying bills or filing applications, these methods may
be sufficient. For more complex or extensive communications, however, such as court hearings, public meetings, and interrogation by police officers, interpreters or assistive listening systems are likely to be necessary.

City governments should ensure that auxiliary aids and services are also provided for individuals who are blind or have low vision. Alternate formats, such as Brailled or large print materials, qualified readers, computer disks, or audio recordings are examples of appropriate auxiliary aids.

City governments are not required to take any actions that will result in a fundamental alteration or in undue financial and administrative burdens. 28 C.F.R. §§ 35.160-35.164.

**Issue: Local Laws, Ordinances, and Regulations**

**Common Problem:**

City governments may fail to consider reasonable modifications in local laws, ordinances, and regulations that would avoid discrimination against individuals with disabilities.

**Result:**

Laws, ordinances, and regulations that appear to be neutral often adversely impact individuals with disabilities. For example, where a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district, installing a ramp to ensure access for people who use wheelchairs may be impermissible without a variance from the city. People with disabilities are therefore unable to gain access to businesses in the city.

City zoning policies were changed to permit this business to install a ramp at its entrance.
Requirement:

City governments are required to make reasonable modifications to policies, practices, or procedures to prevent discrimination on the basis of disability. Reasonable modifications can include modifications to local laws, ordinances, and regulations that adversely impact people with disabilities. For example, it may be a reasonable modification to grant a variance for zoning requirements and setbacks. In addition, city governments may consider granting exceptions to the enforcement of certain laws as a form of reasonable modification. For example, a municipal ordinance banning animals from city health clinics may need to be modified to allow a blind individual who uses a service animal to bring the animal to a mental health counseling session. 28 C.F.R. § 35.130(b)(7).

Issue: 9-1-1 Systems

Common Problem:

City governments do not provide direct and equal access to 9-1-1 systems, or similar emergency response systems, for individuals who are deaf or hard of hearing and use TTY's (TDD's or text telephones) or computer modems.

Result:

People who are deaf or hard of hearing, or those who have speech impairments, and use TTY's or computer modems for telephone communication are unable to access emergency services (police, fire and ambulance) that are necessary for health and safety. When direct emergency services are not available, emergency calls for individuals with disabilities are not responded to appropriately, or in a timely manner, and in some instances, not at all.

Requirement:

City governments that provide emergency telephone services must provide direct access to TTY calls. This means that emergency telephone services can directly receive calls from TTY's and computer modem users without relying on state relay services or third parties. A TTY must be located at each individual operator station. City governments must ensure that emergency operators are trained to use the TTY not only when they recognize the tones of a TTY at the other end of the line, but also when they receive a "silent call." 28 C.F.R. §§ 35.161, 35.162. (See Access for 9-1-1 and Telephone Emergency Services)

Issue: Law Enforcement Policies, Practices, and Procedures

Common Problem:
When dealing with persons with disabilities, law enforcement agencies often fail to modify policies, practices, or procedures in a variety of law enforcement settings -- including citizen interaction, detention, and arrest procedures.

Result:

When interacting with police and other law enforcement officers, people with disabilities are often placed in unsafe situations or are unable to communicate with officers because standard police practices and policies are not appropriately modified. For example, individuals who are deaf or have hearing impairments and use sign language may be unable to communicate with law enforcement officers if they are taken into custody and handcuffed behind their backs. Similarly, individuals with epilepsy or diabetes may be placed at great risk if they are not permitted access to their medications.

Requirement:

Title II of the ADA requires law enforcement agencies to make reasonable modifications in their policies, practices, or procedures that are necessary to ensure accessibility for individuals with disabilities, unless making such modifications would fundamentally alter the program or service involved. Law enforcement officers should be prepared to make reasonable modifications, for example, by allowing, in appropriate circumstances, arrestees who are deaf to be handcuffed in front of their bodies so that they can communicate with others and by allowing detainees access to their medication. 28 C.F.R. § 35.150(b)(7). (See Commonly Asked Questions about the Americans with Disabilities Act and Law Enforcement)

Issue: Self-Evaluation and Transition Plans

Common Problem:

City governments often have not conducted thorough self-evaluations of their current facilities, programs, policies, and practices to determine what changes are necessary to meet the ADA's requirements, and have not developed transition plans to implement these changes.

Result:

When self-evaluations are not conducted and transition plans not developed, city governments are ill-equipped to implement accessibility changes required by the ADA. Without a complete assessment of a city's various facilities, services, and programs, it is difficult to plan or budget for necessary changes, and the city can only react to problems rather than anticipate and correct them in advance. As a result, people with disabilities cannot participate in or benefit from the city's services, programs, and activities.

Requirement:
All city governments were required to complete a self-evaluation of their facilities, programs, policies, and practices by January 26, 1993. The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements. Self-evaluations should consider all of a city's programs, activities, and services, as well as the policies and practices that a city has put in place to implement its various programs and services. Remedial measures necessary to bring the programs, policies, and services into compliance with Title II should be specified -- including, but not limited to: (1) relocation of programs to accessible facilities; (2) offering programs in an alternative accessible manner; (3) structural changes to provide program access; (4) policy modifications to ensure nondiscrimination; and (5) auxiliary aids needed to provide effective communication.

City policies, including those affecting service animals, should be reviewed during the self-evaluation. If a city that employs 50 or more persons decides to make structural changes to achieve program access, it must develop a transition plan that identifies those changes and sets a schedule for implementing them. Both the self-evaluation and transition plans must be available to the public. 28 C.F.R. §§ 35.105, 35.150(d).
QUESTIONS AND ANSWERS:
THE AMERICANS WITH DISABILITIES ACT
AND HIRING POLICE OFFICERS

The Americans with Disabilities Act, or ADA, is a civil rights law guaranteeing equal opportunity to jobs for qualified individuals with disabilities. The following questions and answers respond to the concerns most commonly raised by police departments.

Further information about the ADA's employment requirements may be obtained from the Equal Employment Opportunity Commission at 800-669-4000 (voice) or 800-669-6820 (TDD). Other ADA information is available through the Department of Justice's ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TDD).

1. Q: Who is a "qualified individual with a disability" for employment?

A: A qualified individual with a disability is an employee or job applicant who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks. The person must also be able to perform the "essential" (as opposed to marginal or incidental) functions of the position either with or without reasonable accommodation. Job requirements that screen out or tend to screen out people with disabilities are legitimate only if they are job-related and consistent with business necessity.

2. Q: The ADA prohibits making disability-related inquiries or giving applicants for police jobs medical examinations until a conditional offer of employment is made. Why?

A: In the past, people with disabilities, particularly those with hidden disabilities, were denied jobs once potential employers found out about their disabilities. The ADA seeks to prohibit discrimination by limiting an employer's knowledge of an applicant's disability to a later stage of the job application process. Under the ADA an employer may only ask about an applicant's disability or give a medical examination after the employer has made a job offer. The job offer can be conditioned on successfully passing a medical examination. Thus, if the person with a disability is denied the job because of information obtained from the medical examination or because of the applicant's disability, the reason for this decision is out in the open. This procedure should limit impermissible consideration of disability.
3. Q: I know I can't give a job applicant a medical exam before a conditional job offer is made. But what about physical agility and physical fitness tests?

A: You can give job applicants tests measuring an applicant's ability to perform job-related tasks or physical fitness tests (tests measuring performance of running, lifting, etc.) before any job offer is made. Tests that measure simply an applicant's ability to perform a task are not considered to be medical examinations. But remember, job requirements that screen out or tend to screen out persons with disabilities are legitimate only if they are job-related and consistent with business necessity.

4. Q: But to limit the police department's liability, I need to get a medical approval that it's o.k. for a job applicant to take the physical fitness test. Doesn't the ADA create a catch-22 for police departments?

A: No, the ADA's prohibition on medical exams does not make it illegal for a police department to ask an applicant to provide a certification from a doctor that he or she can safely perform the physical fitness test. The ADA allows an employer to require a limited medical certification in these circumstances. The medical certification should only indicate whether or not the individual can safely perform the test and should not contain any medical information or explanation. The police department may also ask the applicant to sign a waiver releasing the employer from liability for injuries during the test resulting from any physical or mental disorders.

5. Q: Recently a job applicant for a police officer's job came into the police department with fingers that were visibly impaired. The police department required that he demonstrate that he could pull the trigger on the police issue firearm and reload it before a conditional job offer was made. Did this violate the ADA?

A: No. If an individual has a "known" disability that would reasonably appear to interfere with or prevent performance of job functions, that person may be asked to demonstrate how these functions will be performed, even if other applicants are not asked to do so.

6. Q: Can I refuse to consider an applicant because of his current use of illegal drugs?

A: Yes, individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of an "individual with a disability" when an employer takes action on the basis of their current use.

7. Q: What about applicants with a history of illegal drug use? Do they have rights under the ADA?

A: It depends. Casual drug use is not a disability under the ADA. Only individuals who are addicted to drugs, have a history of addiction, or who are regarded as being addicted have an impairment under the law. In order for an individual's drug addiction to be considered a disability under the ADA, it would have to pose a substantial limitation on one or more major life activities. In addition, the individual could not currently be using illegal drugs. Denying employment to job applicants solely because of a history of casual drug use would not raise ADA concerns. On the other hand, policies that screen out applicants because of a history of addiction or treatment for addiction must be carefully scrutinized to ensure that the policies are job-related and consistent with business necessity. If safety is asserted as a justification for such a policy, then the employer must be able to show that individuals excluded because of a history of drug addiction or treatment would pose a direct threat -- i.e., a significant risk of substantial harm -- to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. Again, individuals who currently use illegal drugs, even users who are addicted, may be denied employment because of their
8. Q: May an applicant be asked prior to a conditional job offer whether he or she has ever used illegal drugs or been arrested for any reason?

A: Yes. It does not violate the ADA to ask whether the applicant has ever used illegal drugs or been arrested for such use. However, a law enforcement agency may not ask at the pre-offer stage about the frequency of past illegal drug use or whether the applicant has ever been addicted to drugs or undergone treatment for addiction.

9. Q: Can I disqualify all applicants with felony convictions even though a former addict with a felony drug conviction would be excluded?

A: Yes, as long as you can show that the exclusion is job-related and consistent with business necessity.

10. Q: Does the ADA have any impact on the use of drug-testing?

A: No. Police departments may subject current employees to testing for illegal use of drugs and may require job applicants to undergo such testing at any stage of the application process.

11. Q: If an applicant tests positive for illegal drug use, can I ask whether he or she is using any prescription medications under a doctor's care that may have caused a positive result?

A: Yes. Inquiries into the use of prescription drugs are permitted in response to a positive drug test, even though the answers may disclose information about a disability.

12. Q: Are alcoholics covered by the ADA?

A: Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if he or she is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

13. Q: Can police departments still use polygraph tests at the application stage or do we have to wait until a conditional job offer has been made?

A: You can conduct polygraph exams before a conditional job offer is made. However, employers must exercise care not to ask any prohibited disability-related inquiries in administering the pre-offer polygraph exam.

14. Q: May a police department wait to conduct a background check on applicants until after the information from the medical exam has been reviewed -- which is after a conditional offer of employment has been made?

A: Yes, in certain circumstances. In general, a job offer is not viewed as "bona fide" under the ADA, unless an
employer has evaluated all relevant non-medical information which, from a practical and legal perspective, could reasonably have been analyzed prior to extending the offer. However, a law enforcement employer may be able to demonstrate that a proper background check for law enforcement personnel could not, from a practical perspective, be performed pre-offer because of the need to consult medical records and personnel as part of the security clearance process. Where the police department uses the information from the medical exam during the background check, doing the background check at the post-offer stage saves the police department the cost of doing a second background check.

Federal investigators will carefully scrutinize situations in which a police department withdraws an offer after a post-offer background examination to determine whether the withdrawal was based on non-medical information in the background check or on information obtained through post-offer medical examinations and disability-related inquiries. If it is determined that the offer was withdrawn because of the applicant's disability, then the police department must demonstrate that the reasons for the withdrawal are job-related and consistent with business necessity.

15. Q: The police department hires from a pool of applicants that have received conditional offers. Does the ADA allow a police department to re-rank the applicants in the pool based on the results of the medical examination?

A: Yes, if certain procedures are followed. The ADA allows police departments to make conditional job offers to a pool of applicants that is larger than the number of currently available vacancies if an employer can demonstrate that, for legitimate reasons, it must provide a certain number of offers to fill current or anticipated vacancies. A police department must comply with the ADA when taking individuals out of the pool to fill actual vacancies. It must notify an individual (orally or in writing) if his or her placement into an actual vacancy is in any way adversely affected by the results of a post-offer medical examination or disability-related question. The police department must be able to demonstrate that the basis for any adverse action is job-related and consistent with business necessity.

16. Q: If an employee is injured or becomes ill can he or she be required to take a medical examination?

A: Yes, as long as the examination is job-related and consistent with business necessity.

17. Q: Do I have to create another job for an employee who, because of disability, can no longer perform the essential functions of her job even with reasonable accommodation?

A: No. The ADA does not require an employer to create jobs for people with disabilities. However, the employee must be reassigned to a vacant position for which the individual is qualified if it does not involve a promotion and it would not result in an undue hardship. A municipal rule prohibiting transfers between different municipal personnel systems does not automatically constitute an undue hardship. Whether it would be an undue hardship to modify a no-transfer rule in a particular situation must be evaluated on a case-by-case basis.

18. Q: May a police department create a light duty job category reserved only for incumbent officers without offering identical positions to job applicants?

A: Yes. A police department may create a specific class of light duty jobs that are limited to incumbent police officers.

19. Q: If an officer wants to stay in a street job and his supervisor wants him to go on light duty because of a disability, can the supervisor force him to accept a light duty position?

A: It depends. If the employee can still perform the essential functions of the "street job" with or without reasonable
accommodation, and without being a direct threat to health or safety, he or she cannot be forced into a light duty position because of a disability.

20. Q: If a charging party receives a right to sue letter, does that mean that the government has found that there has been a violation of the ADA?

A: No. The receipt of a right to sue letter in and of itself only signifies that the complainant has exhausted administrative remedies under title I and is now entitled to bring a lawsuit if he or she chooses. In some cases a right to sue letter may be accompanied by an EEOC finding that there is reasonable cause to believe that an ADA violation has occurred. In this situation, it is the EEOC finding and not the existence of the right to sue letter that establishes reasonable cause. More frequently a right to sue letter is issued after a charge has been dismissed for jurisdictional reasons, for lack of merit, or because the charging party has requested the letter and the government has determined that it will not be able to complete its investigation in a timely manner.

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COMMONLY ASKED QUESTIONS
ABOUT THE AMERICANS WITH DISABILITIES ACT
AND LAW ENFORCEMENT

I. Introduction

Police officers, sheriff's deputies, and other law enforcement personnel have always interacted with persons with disabilities and, for many officers and deputies, the Americans with Disabilities Act (ADA) may mean few changes in the way they respond to the public. To respond to questions that may arise, this document offers common sense suggestions to assist law enforcement agencies in complying with the ADA. The examples presented are drawn from real-life situations as described by police officers or encountered by the Department of Justice in its enforcement of the ADA.

1. Q: What is the ADA?
A: The Americans with Disabilities Act (ADA) is a Federal civil rights law. It gives Federal civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in State and local government services, public accommodations, employment, transportation, and telecommunications.

2. Q: How does the ADA affect my law enforcement duties?
A: Title II of the ADA prohibits discrimination against people with disabilities in State and local governments services, programs, and employment. Law enforcement agencies are covered because they are programs of State or local governments, regardless of whether they receive Federal grants or other Federal funds. The ADA affects virtually
everything that officers and deputies do, for example:

- receiving citizen complaints;
- interrogating witnesses;
- arresting, booking, and holding suspects;
- operating telephone (911) emergency centers;
- providing emergency medical services;
- enforcing laws;
- and other duties.

3. Q: Who does the ADA protect?

A: The ADA covers a wide range of individuals with disabilities. An individual is considered to have a "disability" if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Major life activities include such things as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. To be substantially limited means that such activities are restricted in the manner, condition, or duration in which they are performed in comparison with most people.

- The ADA also protects people who are discriminated against because of their association with a person with a disability.

Example: Police receive a call from a woman who complains that someone has broken into her residence. The police department keeps a list of dwellings where people with AIDS are known to reside. The woman's residence is on the list because her son has AIDS. Police fail to respond to her call, because they fear catching the HIV virus. The officers have discriminated against the woman on the basis of her association with an individual who has AIDS.

4. Q: What about someone who uses illegal drugs?

A: Nothing in the ADA prevents officers and deputies from enforcing criminal laws relating to an individual's current use or possession of illegal drugs.

II. Interacting with People with Disabilities

5. Q: What are some common problems that people with disabilities have with law enforcement?

A: Unexpected actions taken by some individuals with disabilities may be misconstrued by officers or deputies as suspicious or illegal activity or uncooperative behavior.

Example: An officer approaches a vehicle and asks the driver to step out of the car. The driver, who has a mobility disability, reaches behind the seat to retrieve her assistive device for walking. This appears suspicious to the officer.

- Individuals who are deaf or hard of hearing, or who have speech disabilities or mental retardation, or
who are blind or visually impaired may not recognize or be able to respond to police directions. These individuals may erroneously be perceived as uncooperative.

**Example:** An officer yells "freeze" to an individual who is running from an area in which a crime has been reported. The individual, who is deaf, cannot hear the officer and continues to run. The officer mistakenly believes that the individual is fleeing from the scene. Similarly, ordering a suspect who is visually impaired to get over "there" is likely to lead to confusion and misunderstanding, because the suspect may have no idea where the officer is pointing.

- Some people with disabilities may have a staggering gait or slurred speech related to their disabilities or the medications they take. These characteristics, which can be associated with neurological disabilities, mental/emotional disturbance, or hypoglycemia, may be misperceived as intoxication.

**Example:** An officer observes a vehicle with one working headlight and pulls the vehicle over. When the driver hands the registration to the officer, the officer notices that the driver's hand is trembling and her speech is slurred. The officer concludes that the individual is under the influence of alcohol, when in fact the symptoms are caused by a neurological disability.

**Example:** A call comes in from a local restaurant that a customer is causing a disturbance. When the responding officer arrives at the scene, she discovers a 25-year-old man swaying on his feet and grimacing. He has pulled the table cloth from the table. The officer believes that the man has had too much to drink and is behaving aggressively, when in fact he is having a seizure.

**What can be done to avoid these situations?**

Training, sensitivity, and awareness will help to ensure equitable treatment of individuals with disabilities as well as effective law enforcement. For example:

- When approaching a car with visible signs that a person with a disability may be driving (such as a designated license plate or a hand control), the police officer should be aware that the driver may reach for a mobility device.

- Using hand signals, or calling to people in a crowd to signal for a person to stop, may be effective ways for an officer to get the attention of a deaf individual.

- When speaking, enunciate clearly and slowly to ensure that the individual understands what is being said.

- Finally, typical tests for intoxication, such as walking a straight line, will be ineffective for individuals whose disabilities cause unsteady gait. Other tests, like breathalyzers, will provide more accurate results and reduce the possibility of false arrest.

**6. Q: What if someone is demonstrating threatening behavior because of his or her disability?**

**A:** Police officers may, of course, respond appropriately to real threats to health or safety, even if an individual's actions are a result of her or his disability. But it is important that police officers are trained to distinguish behaviors that pose a real risk from behaviors that do not, and to recognize when an individual, such as someone who is having a seizure or
exhibiting signs of psychotic crisis, needs medical attention. It is also important that behaviors resulting from a disability not be criminalized where no crime has been committed. Avoid these scenarios:

- A store owner calls to report that an apparently homeless person has been in front of the store for an hour, and customers are complaining that he appears to be talking to himself. The individual, who has mental illness, is violating no loitering or panhandling laws. Officers arriving on the scene arrest him even though he is violating no laws.

- Police receive a call in the middle of the night about a teenager with mental illness who is beyond the control of her parents. All attempts to get services for the teenager at that hour fail, so the responding officer arrests her until he can get her into treatment. She ends up with a record, even though she committed no offense.

7. Q: What procedures should law enforcement officers follow to arrest and transport a person who uses a wheelchair?

A: Standard transport practices may be dangerous for many people with mobility disabilities. Officers should use caution not to harm an individual or damage his or her wheelchair. The best approach is to ask the person what type of transportation he or she can use, and how to lift or assist him or her in transferring into and out of the vehicle.

Example: An individual with a disability is removed from his wheelchair and placed on a bench in a paddy wagon. He is precariously strapped to the bench with his own belt. When the vehicle begins to move, he falls off of the bench and is thrown to the floor of the vehicle where he remains until arriving at the station.

- Some individuals who use assistive devices like crutches, braces, or even manual wheelchairs might be safely transported in patrol cars.

- Safe transport of other individuals who use manual or power wheelchairs might require departments to make minor modifications to existing cars or vans, or to use lift-equipped vans or buses. Police departments may consider other community resources, e.g., accessible taxi services.

8. Q: What steps should officers follow to communicate effectively with an individual who is blind or visually impaired?

A: It is important for officers to identify themselves and to state clearly and completely any directions or instructions -- including any information that is posted visually. Officers must read out loud in full any documents that a person who is blind or visually impaired needs to sign. Before taking photos or fingerprints, it is a good idea to describe the procedures in advance so that the individual will know what to expect.

9. Q: Do police personnel need to take special precautions when providing emergency medical services to someone who has HIV or AIDS?

A: Persons with HIV or AIDS should be treated just like any other person requiring medical attention. In fact, emergency medical service providers are required routinely to treat all persons as if they are infectious for HIV, Hepatitis B, or other bloodborne pathogens, by practicing universal precautions. Many people do not know that they are infected with a bloodborne pathogen, and there are special privacy considerations that may cause those who know they
are infected not to disclose their infectious status.

- Universal precautions for emergency service providers include the wearing of gloves, a mask, and protective eyewear, and, where appropriate, the proper disinfection or disposal of contaminated medical equipment. Protective barriers like gloves should be used whenever service providers are exposed to blood.

**Example:** Police are called to a shopping mall to assist a teenager who has cut his hand and is bleeding profusely. As long as the attending officers wear protective gloves, they will not be at risk of acquiring HIV, Hepatitis B, or any other bloodborne pathogen, while treating the teenager.

- Refusing to provide medical assistance to a person because he or she has, or is suspected of having, HIV or AIDS is discrimination.

**Example:** Police are called to a shopping mall, where an individual is lying on the ground with chest pains. The responding officer asks the individual whether she is currently taking any medications. She responds that she is taking AZT, a medication commonly prescribed for individuals who are HIV-positive or have AIDS. The officer announces to his colleagues that the individual has AIDS and refuses to provide care. This refusal violates the ADA.

### III. Effective Communication

10. **Q:** Do police departments have to arrange for a sign language interpreter every time an officer interacts with a person who is deaf?

**A:** No. Police officers are required by the ADA to ensure effective communication with individuals who are deaf or hard of hearing. Whether a qualified sign language interpreter or other communication aid is required will depend on the nature of the communication and the needs of the requesting individual. For example, some people who are deaf do not use sign language for communication and may need to use a different communication aid or rely on lipreading. In one-on-one communication with an individual who lipreads, an officer should face the individual directly, and should ensure that the communication takes place in a well-lighted area.

- Examples of other communication aids, called “auxiliary aids and services” in the ADA, that assist people who are deaf or hard of hearing include the exchange of written notes, telecommunications devices for the deaf (TDD’s) (also called text telephones (TT’s) or teletypewriters (TTY’s)), telephone handset amplifiers, assistive listening systems, and videotext displays.
- The ADA requires that the expressed choice of the individual with the disability, who is in the best position to know her or his needs, should be given primary consideration in determining which communication aid to provide. The ultimate decision is made by the police department. The department should honor the individual’s choice unless it can demonstrate that another effective method of communication exists.
- Police officers should generally not rely on family members, who are frequently emotionally involved, to provide sign language interpreting.
Example: A deaf mother calls police to report a crime in which her hearing child was abused by the child's father. Because it is not in the best interests of the mother or the child for the child to hear all of the details of a very sensitive, emotional situation, the mother specifically requests that the police officers procure a qualified sign language interpreter to facilitate taking the report. Officers ignore her request and do not secure the services of an interpreter. They instead communicate with the hearing child, who then signs to the mother. The police department in this example has violated the ADA because it ignored the mother's request and inappropriately relied on a family member to interpret.

- In some limited circumstances a family member may be relied upon to interpret.

Example: A family member may interpret in an emergency, when the safety or welfare of the public or the person with the disability is of paramount importance. For example, emergency personnel responding to a car accident may need to rely on a family member to interpret in order to evaluate the physical condition of an individual who is deaf. Likewise, it may be appropriate to rely on a family member to interpret when a deaf individual has been robbed and an officer in hot pursuit needs information about the suspect.

Example: A family member may interpret for the sake of convenience in circumstances where an interpreter is not required by the ADA, such as in situations where exchanging written notes would be effective. For example, it would be appropriate to rely on a passenger who is a family member to interpret when an individual who is deaf is asking an officer for traffic directions, or is stopped for a traffic violation.

11. Q: If the person uses sign language, what kinds of communication will require an interpreter?

A: The length, importance, or complexity of the communication will help determine whether an interpreter is necessary for effective communication.

- In a simple encounter, such as checking a driver's license or giving street directions, a notepad and pencil normally will be sufficient.

- During interrogations and arrests, a sign language interpreter will often be necessary to effectively communicate with an individual who uses sign language.

- If the legality of a conversation will be questioned in court, such as where Miranda warnings are issued, a sign language interpreter may be necessary. Police officers should be careful about miscommunication in the absence of a qualified interpreter -- a nod of the head may be an attempt to appear cooperative in the midst of misunderstanding, rather than consent or a confession of wrongdoing.

- In general, if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required, unless one is necessary to explain the action being taken.

Example: An officer clocks a car on the highway driving 15 miles above the speed limit. The driver, who is deaf, is pulled over and issued a noncriminal citation. The individual is able to understand the reasons for the citation, because the officer exchanges written notes with the individual and points to information on the citation. In this case, a sign language interpreter is not needed.

Example: An officer responds to an aggravated battery call and upon arriving at the scene observes a bleeding victim
and an individual holding a weapon. Eyewitnesses observed the individual strike the victim. The individual with the weapon is deaf, but the officer has probable cause to make a felony arrest without an interrogation. In this case, an interpreter is not necessary to carry out the arrest.

12. **Q: Do I have to take a sign language interpreter to a call about a violent crime in progress or a similar urgent situation involving a person who is deaf?**

**A:** No. An officer's immediate priority is to stabilize the situation. If the person being arrested is deaf, the officer can make an arrest and call for an interpreter to be available later at the booking station.

13. **Q: When a sign language interpreter is needed, where do I find one?**

**A:** Your department should have one or more interpreters available on call. This is generally accomplished through a contract with a sign language interpreter service. Communicating through sign language will not be effective unless the interpreter is familiar with the vocabulary and terminology of law enforcement, so your department should ensure that the interpreters it uses are familiar with law enforcement terms.

14. **Q: Is there any legal limit to how much my department must spend on communication aids like interpreters?**

**A:** Yes. Your department is not required to take any step that would impose undue financial and administrative burdens. The "undue burden" standard is a high one. For example, whether an action would be an undue financial burden is determined by considering all of the resources available to the department. If providing a particular auxiliary aid or service would impose an undue burden, the department must seek alternatives that ensure effective communication to the maximum extent feasible.

15. **Q: When would an officer use an assistive listening device as a communication aid?**

**A:** Assistive listening systems and devices receive and amplify sound and are used for communicating in a group setting with individuals who are hard of hearing.

- At headquarters or a precinct building, if two or more officers are interrogating a witness who is hard of hearing, or in meetings that include an individual who is hard of hearing, an assistive listening device may be needed.

16. **Q: What is a TDD and does every police station have to have one?**

**A:** A telecommunications device for the deaf (TDD) is a device used by individuals with hearing or speech disabilities to communicate on the telephone. A TDD is a keyboard with a display for receiving typed text that can be attached to a telephone. The TDD user types a message that is received by another TDD at the other end of the line.

- Arrestees who are deaf or hard of hearing, or who have speech disabilities, may require a TDD for making outgoing calls. TDD's must be available to inmates with disabilities under the same terms and conditions as telephone privileges are offered to all inmates, and information indicating the availability...
of the TDD should be provided.

- TDDs typically cost $200-300 each and can be used with a standard telephone. It is unlikely that the cost of purchasing a TDD will be prohibitive. Still, a small department with limited resources could arrange to share a TDD with a local courthouse or other entity, so long as the TDD is immediately available as needed.

17. Q. What about "911" calls? How are those made accessible to people with speech or hearing disabilities?

A: Individuals with hearing and speech disabilities must have direct access to "911" or similar emergency telephone services, meaning that emergency response centers must be equipped to receive calls from TDD and computer modem users without relying on third parties or state relay services. It is important that operators are trained to use the TDD when the caller is silent, and not only when the operator recognizes the tones of a TDD at the other end of the line. For additional information, please refer to the Department of Justices publication, *Commonly Asked Questions Regarding Telephone Emergency Services*. For information about how to obtain this and other publications, see the resources section at the end of this document.

18. Q: Procedures at my office require citizens to fill out forms when reporting crimes. What if the person has a vision disability, a learning disability, mental retardation or some other disability that may prevent the person from filling out a form?

A: The simplest solution is to have an officer or clerk assist the person in reading and filling out the form. Police officers have probably been doing this for years. The form itself could also be provided in an alternative format. Providing a copy of the form in large print (which is usually as simple as using a copy machine or computer to increase type size) will make the form accessible to many individuals with moderate vision disabilities.

IV. Architectural Access

19. Q: Does the ADA require all police stations to be accessible to people with disabilities?

A: No. Individuals with disabilities must have equal access to law enforcement services, but the ADA is flexible in how to achieve that goal. The ADA requires programs to be accessible to individuals with disabilities, not necessarily each and every facility. Often, structural alterations to an existing police station or sheriff's office will be necessary to create effective access. In some situations, however, it may be as effective to use alternative methods, such as relocating a service to an accessible building, or providing an officer who goes directly to the individual with the disability. Whatever approach to achieving "program access" is taken, training of officers and deputies, well-developed policies, and clear public notice of the approach will be critical to ensuring successful ADA compliance.

Example: A police station in a small town is inaccessible to individuals with mobility disabilities. The department decides that it cannot alter all areas of the station because of insufficient funds. It decides to alter the lobby and restrooms so that the areas the public uses -- for filling out crime reports, obtaining copies of investigative reports for insurance purposes, or seeking referrals to shelter care -- are accessible. Arrangements are made to conduct victim and witness interviews with individuals with disabilities in a private conference room in the local library or other
government building, and to use a neighboring department's accessible lock-up for detaining suspects with disabilities. These measures are consistent with the ADA's program accessibility requirements.

Example: An individual who uses a wheelchair calls to report a crime, and is told that the police station is inaccessible, but that the police department has a policy whereby a police officer will meet individuals with disabilities in the parking lot. The individual arrives at the parking lot, waits there for three hours, becomes frustrated, and leaves. By neglecting to adequately train officers about its policy, the police department has failed in its obligation to provide equal access to police services, and has lost valuable information necessary for effective law enforcement.

20. Q: What about holding cells and jails that are not accessible?

A: An arrestee with a mobility disability must have access to the toilet facilities and other amenities provided at the lock-up or jail. A law enforcement agency must make structural changes, if necessary, or arrange to use a nearby accessible facility.

- Structural changes can be undertaken in a manner that ensures officer safety and general security. For example, grab bars in accessible restrooms can be secured so that they are not removable.
- If meeting and/or interrogation rooms are provided, those areas should also be accessible for use by arrestees, family members, or legal counsel who have mobility disabilities.

21. Q: Is there a limit to the amount of money my agency must spend to alter an existing police facility?

A: Yes. It is the same legal standard of "undue burden" discussed earlier with regard to the provision of communication aids. Your agency is not required to undertake alterations that would impose undue financial and administrative burdens. If an alteration would impose an "undue burden", the agency must chose an alternative that ensures access to its programs and services.

22. Q. We are building a new prison. Do we need to make it accessible?

A: Yes. All new buildings must be made fully accessible to, and usable by, individuals with disabilities. The ADA provides architectural standards that specify what must be done to create access.

- Either the Uniform Federal Accessibility Standards (UFAS) or the ADA Standards for Accessible Design (without the elevator exemption) (ADA Standards) may be used. UFAS has specific scoping requirements for prisons that require, among other things, that 5% of all cells be made accessible to individuals with mobility disabilities.
- Unlike modifications of existing facilities, there is no undue burden limitation for new construction.
- In addition, if an agency alters an existing facility for any reason -- including reasons unrelated to accessibility -- the altered areas must be made accessible to individuals with disabilities.
V. Modifications of Policies, Practices, and Procedures

23. Q: What types of modifications in law enforcement policies, practices, and procedures does the ADA require?

A: The ADA requires law enforcement agencies to make reasonable modifications in their policies, practices, and procedures that are necessary to ensure accessibility for individuals with disabilities, unless making such modifications would fundamentally alter the program or service involved. There are many ways in which a police or sheriffs department might need to modify its normal practices to accommodate a person with a disability.

Example: A department modifies a rule that prisoners or detainees are not permitted to have food in their cells except at scheduled intervals, in order to accommodate an individual with diabetes who uses medication and needs access to carbohydrates or sugar to keep blood sugar at an appropriate level.

Example: A department modifies its enforcement of a law requiring a license to use motorized vehicles on the streets, in order to accommodate individuals who use scooters or motorized wheelchairs. Such individuals are pedestrians, but may need to use streets where curb cuts are unavailable.

Example: A department modifies its regular practice of handcuffing arrestees behind their backs, and instead handcuffs deaf individuals in front in order for the person to sign or write notes.

Example: A department modifies its practice of confiscating medications for the period of confinement, in order to permit inmates who have disabilities that require self-medication, such as cardiac conditions or epilepsy, to self-administer medications that do not have abuse potential.

Example: A department modifies the procedures for giving Miranda warnings when arresting an individual who has mental retardation. Law enforcement personnel use simple words and ask the individual to repeat each phrase of the warnings in her or his own words. The personnel also check for understanding, by asking the individual such questions as what a lawyer is and how a lawyer might help the individual, or asking the individual for an example of what a right is. Using simple language or pictures and symbols, speaking slowly and clearly, and asking concrete questions, are all ways to communicate with individuals who have mental retardation.

• Informal practices may also need to be modified. Sometimes, because of the demand for police services, third party calls are treated less seriously. Police officers should keep in mind that calling through a third party may be the only option for individuals with certain types of disabilities.

VI. Resources

24. Q: It sounds like awareness and training are critical for effective interaction with individuals with disabilities. How can I find out more about the needs of my local disability community?

A: State and local government entities were required, by January 26, 1993, to conduct a "self-evaluation" reviewing their current services, policies, and practices for compliance with the ADA. Entities employing 50 or more persons were
also to develop a "transition plan" identifying structural changes that needed to be made. As part of that process, the ADA encouraged entities to involve individuals with disabilities from their local communities. Continuing this process will promote access solutions that are reasonable and effective. Even though the deadlines for the self-evaluation, transition plan, and completion of structural changes have passed, compliance with the ADA is an ongoing obligation.

25. Q: Where can I turn for answers to other questions about the ADA?

A: The Department of Justice's toll-free ADA Information Line answers questions and offers free publications about the ADA. The telephone numbers are: 800-514-0301 (voice) or 800-514-0383 (TTY). Publications are also available from the ADA Website www.ada.gov.

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Title II Technical Assistance Manual
Covering State and Local Government Programs and Services

Introduction

This technical assistance manual addresses the requirements of title II of the Americans with Disabilities Act, which applies to the operations of State and local governments. It is one of a series of publications issued by Federal agencies under section 506 of the ADA to assist individuals and entities in understanding their rights and duties under the Act.

This manual is part of a broader program of technical assistance conducted by the Department of Justice to promote voluntary compliance with the requirements not only of title II, but also of title III of the ADA, which applies to public accommodations, commercial facilities, and private entities offering certain examinations and courses.

The purpose of this technical assistance manual is to present the ADA's requirements for State and local governments in a format that will be useful to the widest possible audience. The guidance provided in the Department's regulations and accompanying preambles has been carefully reorganized to provide a focused, systematic description of the ADA's requirements. The manual attempts to avoid an overly legalistic style without sacrificing completeness. In order to promote readability and understanding, the text makes liberal use of questions and answers and illustrations.

The manual is divided into nine major subject matter headings with numerous numbered subheadings. Each numbered heading and subheading is listed in a quick reference table of contents at the beginning of the manual.

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II-1.0000 COVERAGE

Regulatory references: 28 CFR 35.102-35.104.

II-1.1000 General.

Title II of the ADA covers programs, activities, and services of public entities. It is divided into two subtitles. This manual focuses on subtitle A of title II, which is implemented by the Department of Justice's title II regulation. Subtitle B, covering public transportation, and the Department of Transportation's regulation implementing that subtitle, are not addressed in this manual.

Subtitle A is intended to protect qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It additionally extends the prohibition of discrimination on the basis of disability established by section 504 of the Rehabilitation Act of 1973, as amended, to all activities of State and local governments, including those that do not receive Federal financial assistance. By law, the Department of Justice's title II regulation adopts the general prohibitions of discrimination established under section 504, and incorporates specific prohibitions of discrimination from the ADA.

Subtitle B is intended to clarify the requirements of section 504 for public transportation entities that receive Federal financial assistance. Also it extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance. It establishes detailed and complex standards for the operation of public transit systems, including commuter and intercity rail (AMTRAK). The Department of Transportation is responsible for the implementation of the second subtitle of Title II and issued a regulation implementing that subtitle.

II-1.2000 Public entity. A public entity covered by title II is defined as --

1) Any State or local government;

2) Any department, agency, special purpose district, or other instrumentality of a State or local government; or

3) Certain commuter authorities as well as AMTRAK.

As defined, the term "public entity" does not include the Federal Government. Title II, therefore, does not apply to the Federal Government, which is covered by sections 501 and 504 of the Rehabilitation Act of 1973.

Title II is intended to apply to all programs, activities, and services provided or operated by State and local governments. Currently, section 504 of the Rehabilitation Act only applies to programs or activities receiving Federal financial assistance. Because many State and local government operations, such as courts, licensing, and legislative facilities and proceedings do not receive Federal funds, they are beyond the reach of section 504.
In some cases it is difficult to determine whether a particular entity that is providing a public service, such as a library, museum, or volunteer fire department, is in fact a public entity. Where an entity appears to have both public and private features, it is necessary to examine the relationship between the entity and the governmental unit to determine whether the entity is public or private. Factors to be considered in this determination include --

1) Whether the entity is operated with public funds; 2) Whether the entity's employees are considered government employees;

3) Whether the entity receives significant assistance from the government by provision of property or equipment; and

4) Whether the entity is governed by an independent board selected by members of a private organization or a board elected by the voters or appointed by elected officials.

**II-1.3000 Relationship to title III.** Public entities are not subject to title III of the ADA, which covers only private entities. Conversely, private entities are not subject to title II. In many situations, however, public entities have a close relationship to private entities that are covered by title III, with the result that certain activities may be at least indirectly affected by both titles.

**ILLUSTRATION 1:** A privately owned restaurant in a State park operates for the convenience of park users under a concession agreement with a State department of parks. As a public accommodation, the restaurant is subject to title III and must meet those obligations. The State department of parks, a public entity, is subject to title II. The parks department is obligated to ensure by contract that the restaurant is operated in a manner that enables the parks department to meet its title II obligations, even though the restaurant is not directly subject to title II.

**ILLUSTRATION 2:** A city owns a downtown office building occupied by its department of human resources. The building's first floor, however, is leased to a restaurant, a newsstand, and a travel agency. The city, as a public entity and landlord of the office building, is subject to title II. As a public entity, it is not subject to title III, even though its tenants are public accommodations that are covered by title III. Similarly, if an existing building is owned by a private entity covered by title III and rented to a public entity covered by title II, the private landlord does not become subject to the public entity's title II program access requirement by virtue of the leasing relationship. The private landlord only has title III obligations. These extend to the commercial facility as a whole and to any places of public accommodation contained in the facility. The governmental entity is responsible for ensuring that the programs offered in its rented space meet the requirements of title II.

**ILLUSTRATION 3:** A city engages in a joint venture with a private corporation to build a new professional sports stadium. Where public and private entities act jointly, the public entity must ensure that the relevant requirements of title II are met; and the private entity must ensure compliance with title III. Consequently, the new stadium would have to be built in compliance with the accessibility guidelines of both titles II and III. In cases where the standards differ, the stadium would have to meet the standard that provides the highest degree of access to individuals with disabilities.
ILLUSTRATION 4: A private, nonprofit corporation operates a number of group homes under contract with a State agency for the benefit of individuals with mental disabilities. These particular homes provide a significant enough level of social services to be considered places of public accommodation under title III. The State agency must ensure that its contracts are carried out in accordance with title II, and the private entity must ensure that the homes comply with title III.

II-1.4000 Relationship to other laws

II-1.4100 Rehabilitation Act. Title II provides protections to individuals with disabilities that are at least equal to those provided by the nondiscrimination provisions of title V of the Rehabilitation Act. Title V includes such provisions as section 501, which prohibits discrimination on the basis of disability in Federal employment; section 503, which addresses the employment practices of Federal contractors; and section 504, which covers all programs receiving Federal financial assistance and all the operations of Federal Executive agencies. Title II may not be interpreted to provide a lesser degree of protection to individuals with disabilities than is provided under these laws.

II-1.4200 Other Federal and State laws. Title II does not disturb other Federal laws or any State laws that provide protection for individuals with disabilities at a level greater or equal to that provided by the ADA. It does, however, prevail over any conflicting State laws.

II-2.0000 QUALIFIED INDIVIDUALS WITH DISABILITIES

Regulatory references: 28 CFR 35.104.

II-2.1000 General. Title II of the ADA prohibits discrimination against any "qualified individual with a disability." Whether a particular individual is protected by title II requires a careful analysis first, of whether an individual is an "individual with a disability," and then whether that individual is "qualified."

People commonly refer to disabilities or disabling conditions in a broad sense. For example, poverty or lack of education may impose real limitations on an individual's opportunities. Likewise, being only five feet in height may prove to be an insurmountable barrier to an individual whose ambition is to play professional basketball. Although one might loosely characterize these conditions as "disabilities" in relation to the aspirations of the particular individual, the disabilities reached by title II are limited to those that meet the ADA's legal definition -- those that place substantial limitations on an individual's major life activities.

Title II protects three categories of individuals with disabilities:

1) Individuals who have a physical or mental impairment that substantially limits one or more major life activities;

2) Individuals who have a record of a physical or mental impairment that substantially limited one or more of the individual's major life activities; and
3) Individuals who are regarded as having such an impairment, whether they have the impairment or not.

**II-2.2000 Physical or mental impairments.** The first category of persons covered by the definition of an individual with a disability is restricted to those with "physical or mental impairments." Physical impairments include --

1) Physiological disorders or conditions;

2) Cosmetic disfigurement; or

3) Anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs (which would include speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.); respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.

Specific examples of physical impairments include orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Mental impairments include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Simple physical characteristics such as the color of one's eyes, hair, or skin; baldness; left-handedness; or age do not constitute physical impairments. Similarly, disadvantages attributable to environmental, cultural, or economic factors are not the type of impairments covered by title II. Moreover, the definition does not include common personality traits such as poor judgment or a quick temper, where these are not symptoms of a mental or psychological disorder.

*Does title II prohibit discrimination against individuals based on their sexual orientation?* No. The phrase "physical or mental impairment" does not include homosexuality or bisexuality.

**II-2.3000 Drug addiction as an impairment.** Drug addiction is an impairment under the ADA. A public entity, however, may base a decision to withhold services or benefits in most cases on the fact that an addict is engaged in the current and illegal use of drugs.

*What is "illegal use of drugs"?* Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. It does not include use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Controlled Substances Act or other Federal law. Alcohol is not a "controlled substance," but alcoholism is a disability.

*What is "current use"?* "Current use" is the illegal use of controlled substances that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and
ongoing problem. A public entity should review carefully all the facts surrounding its belief that an individual is currently taking illegal drugs to ensure that its belief is a reasonable one.

*Does title II protect drug addicts who no longer take controlled substances?* Yes. Title II prohibits discrimination against drug addicts based solely on the fact that they previously illegally used controlled substances. Protected individuals include persons who have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and who are not engaging in current illegal use of drugs. Additionally, discrimination is prohibited against an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs. Finally, a person who is erroneously regarded as engaging in current illegal use of drugs is protected.

*Is drug testing permitted under the ADA?* Yes. Public entities may utilize reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

**II-2.4000 Substantial limitation of a major life activity.** To constitute a "disability," a condition must substantially limit a major life activity. Major life activities include such activities as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

*When does an impairment "substantially limit" a major life activity?* There is no absolute standard for determining when an impairment is a substantial limitation. Some impairments obviously or by their nature substantially limit the ability of an individual to engage in a major life activity.

ILLUSTRATION 1: A person who is deaf is substantially limited in the major life activity of hearing. A person with a minor hearing impairment, on the other hand, may not be substantially limited.

ILLUSTRATION 2: A person with traumatic brain injury may be substantially limited in the major life activities of caring for one's self, learning, and working because of memory deficit, confusion, contextual difficulties, and inability to reason appropriately.

An impairment substantially interferes with the accomplishment of a major life activity when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people.

ILLUSTRATION 1: A person with a minor vision impairment, such as 20/40 vision, does not have a substantial impairment of the major life activity of seeing.

ILLUSTRATION 2: A person who can walk for 10 miles continuously is not substantially limited in walking merely because, on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

*Are "temporary" mental or physical impairments covered by title II?* Yes, if the impairment substantially limits a major life activity. The issue of whether a temporary impairment is significant enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or
expected duration) of the impairment and the extent to which it actually limits a major life activity of the
affected individual.

ILLUSTRATION: During a house fire, M received burns affecting his hands and arms. While it is
expected that, with treatment, M will eventually recover full use of his hands, in the meantime he requires
assistance in performing basic tasks required to care for himself such as eating and dressing. Because M's
burns are expected to substantially limit a major life activity (caring for one's self) for a significant period
of time, M would be considered to have a disability covered by title II.

If a person's impairment is greatly lessened or eliminated through the use of aids or devices, would the
person still be considered an individual with a disability? Whether a person has a disability is assessed
without regard to the availability of mitigating measures, such as reasonable modifications, auxiliary aids
and services, services and devices of a personal nature, or medication. For example, a person with severe
hearing loss is substantially limited in the major life activity of hearing, even though the loss may be
improved through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or
diabetes, that, if untreated, would substantially limit a major life activity, are still individuals with
disabilities under the ADA, even if the debilitating consequences of the impairment are controlled by
medication.

II-2.5000 Record of a physical or mental impairment that substantially limited
a major life activity. The ADA protects not only those individuals with disabilities who actually
have a physical or mental impairment that substantially limits a major life activity, but also those with a
record of such an impairment. This protected group includes --

1) A person who has a history of an impairment that substantially limited a major life activity but who has
recovered from the impairment. Examples of individuals who have a history of an impairment are persons
who have histories of mental or emotional illness, drug addiction, alcoholism, heart disease, or cancer.

2) Persons who have been misclassified as having an impairment. Examples include persons who have
been erroneously diagnosed as mentally retarded or mentally ill.

II-2.6000 "Regarded as." The ADA also protects certain persons who are regarded by a public
entity as having a physical or mental impairment that substantially limits a major life activity, whether or
not that person actually has an impairment. Three typical situations are covered by this category:

1) An individual who has a physical or mental impairment that does not substantially limit major life
activities, but who is treated as if the impairment does substantially limit a major life activity;

ILLUSTRATION: A, an individual with mild diabetes controlled by medication, is barred by the staff of
a county-sponsored summer camp from participation in certain sports because of her diabetes. Even
though A does not actually have an impairment that substantially limits a major life activity, she is
protected under the ADA because she is treated as though she does.

2) An individual who has a physical or mental impairment that substantially limits major life activities
only as a result of the attitudes of others towards the impairment;
ILLUSTRATION: B, a three-year old child born with a prominent facial disfigurement, has been refused admittance to a county-run day care program on the grounds that her presence in the program might upset the other children. B is an individual with a physical impairment that substantially limits her major life activities only as the result of the attitudes of others toward her impairment.

3) An individual who has no impairments but who is treated by a public entity as having an impairment that substantially limits a major life activity.

ILLUSTRATION: C is excluded from a county-sponsored soccer team because the coach believes rumors that C is infected with the HIV virus. Even though these rumors are untrue, C is protected under the ADA, because he is being subjected to discrimination by the county based on the belief that he has an impairment that substantially limits major life activities (i.e., the belief that he is infected with HIV).

II-2.7000 Exclusions. The following conditions are specifically excluded from the definition of "disability": transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

II-2.8000 Qualified individual with a disability. In order to be an individual protected by title II, the individual must be a "qualified" individual with a disability. To be qualified, the individual with a disability must meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities, or services with or without --

1) Reasonable modifications to a public entity's rules, policies, or practices;

2) Removal of architectural, communication, or transportation barriers; or

3) Provision of auxiliary aids and services.

The "essential eligibility requirements" for participation in many activities of public entities may be minimal. For example, most public entities provide information about their programs, activities, and services upon request. In such situations, the only "eligibility requirement" for receipt of such information would be the request for it. However, under other circumstances, the "essential eligibility requirements" imposed by a public entity may be quite stringent.

ILLUSTRATION: The medical school at a public university may require those admitted to its program to have successfully completed specified undergraduate science courses.

Can a visitor, spectator, family member, or associate of a program participant be a qualified individual with a disability under title II? Yes. Title II protects any qualified individual with a disability involved in any capacity in a public entity's programs, activities, or services.

ILLUSTRATION: Public schools generally operate programs and activities that are open to students' parents, such as parent-teacher conferences, school plays, athletic events, and graduation ceremonies. A
parent who is a qualified individual with a disability with regard to these activities would be entitled to title II protection.

*Can health and safety factors be taken into account in determining who is qualified? Yes.* An individual who poses a direct threat to the health or safety of others will not be "qualified."

*What is a "direct threat"?* A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by the public entity's modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services. The public entity's determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability.

*How does one determine whether a direct threat exists?* The determination must be based on an individualized assessment that relies on current medical evidence, or on the best available objective evidence, to assess --

1) The nature, duration, and severity of the risk;

2) The probability that the potential injury will actually occur; and,

3) Whether reasonable modifications of policies, practices, or procedures will mitigate or eliminate the risk.

Making this assessment will not usually require the services of a physician. Medical guidance may be obtained from public health authorities, such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes of Health, including the National Institute of Mental Health.

ILLUSTRATION: An adult individual with tuberculosis wishes to tutor elementary school children in a volunteer mentor program operated by a local public school board. Title II permits the board to refuse to allow the individual to participate on the grounds that the mentor's condition would be a direct threat to the health or safety of the children participating in the program, if the condition is contagious and the threat cannot be mitigated or eliminated by reasonable modifications in policies, practices, or procedures.

**II-3.0000 GENERAL REQUIREMENTS**


**II-3.1000 General.** Most requirements of title II are based on section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in federally assisted programs and activities. Section 504 also applies to programs and activities "conducted" by Federal Executive agencies. The ADA similarly extends section 504's nondiscrimination requirement to all activities of State and local governments, not only those that receive Federal financial assistance.

Section 504 was implemented in 1977 for federally assisted programs in regulations issued by the Department of Health, Education, and Welfare. Later, other Federal agencies issued their own regulations
for the programs and activities that they funded. Public entities should be familiar with those regulations from their experience in applying for Federal grant programs. As mandated by the ADA, the requirements for public entities under title II are consistent with and, in many areas, identical to the requirements of the section 504 regulations.

The ADA, however, also mandates that the title II regulations be consistent with the concepts of the ADA. Therefore, the title II regulations include language that is adapted from other parts of the ADA but not specifically found in section 504 regulations.

**II-3.2000 Denial of participation.** The ADA, like other civil rights statutes, prohibits the denial of services or benefits on specified discriminatory grounds. Just as a government office cannot refuse to issue food stamps or other benefits to an individual on the basis of his or her race, it cannot refuse to provide benefits solely because an individual has a disability.

ILLUSTRATION: A city cannot refuse to admit an individual to a city council meeting that is open to the public merely because the individual is deaf.

**II-3.3000 Equality in participation/benefits.** The ADA provides for equality of opportunity, but does not guarantee equality of results. The foundation of many of the specific requirements in the Department's regulations is the principle that individuals with disabilities must be provided an equally effective opportunity to participate in or benefit from a public entity's aids, benefits, and services.

ILLUSTRATION 1: A deaf individual does not receive an equal opportunity to benefit from attending a city council meeting if he or she does not have access to what is said.

ILLUSTRATION 2: An individual who uses a wheelchair will not have an equal opportunity to participate in a program if applications must be filed in a second-floor office of a building without an elevator, because he or she would not be able to reach the office.

ILLUSTRATION 3: Use of printed information alone is not "equally effective" for individuals with vision impairments who cannot read written material.

On the other hand, as long as persons with disabilities are afforded an equally effective opportunity to participate in or benefit from a public entity's aids, benefits, and services, the ADA's guarantee of equal opportunity is not violated.

ILLUSTRATION 4: A person who uses a wheelchair seeks to run for a State elective office. State law requires the candidate to collect petition signatures in order to qualify for placement on the primary election ballot. Going door-to-door to collect signatures is difficult or, in many cases, impossible for the candidate because of the general inaccessibility of private homes. The law, however, provides over five months to collect the signatures and allows them to be collected by persons other than the candidate both through the mail and at any site where registered voters congregate. With these features, the law affords an equally effective opportunity for the individual who uses a wheelchair to seek placement on the ballot and to participate in the primary election process.
Also, the ADA generally does not require a State or local government entity to provide additional services for individuals with disabilities that are not provided for individuals without disabilities.

ILLUSTRATION 5: The ADA does not require a city government to provide snow removal service for the private driveways of residents with disabilities, if the city does not provide such service for residents without disabilities.

Specific requirements for physical access to programs and communications are discussed in detail below, but the general principle underlying these obligations is the mandate for an equal opportunity to participate in and benefit from a public entity's services, programs, and activities.

Finally, the ADA permits a public entity to offer benefits to individuals with disabilities, or a particular class of individuals with disabilities, that it does not offer to individuals without disabilities. This allows State and local governments to provide special benefits, beyond those required by the ADA, that are limited to individuals with disabilities or a particular class of individuals with disabilities, without thereby incurring additional obligations to persons without disabilities or to other classes of individuals with disabilities.

ILLUSTRATION 6: The ADA does not require a State government to continue providing medical support payments to dependent children with schizophrenia, if other dependent children without disabilities are also ineligible for continued coverage. This is true even if the State chooses to provide continued coverage to a particular class of children with disabilities (e.g., those with physical impairments, or those who have mental retardation).

II-3.4000 Separate benefit/integrated setting. A primary goal of the ADA is the equal participation of individuals with disabilities in the "mainstream" of American society. The major principles of mainstreaming are --

1) Individuals with disabilities must be integrated to the maximum extent appropriate.

2) Separate programs are permitted where necessary to ensure equal opportunity. A separate program must be appropriate to the particular individual.

3) Individuals with disabilities cannot be excluded from the regular program, or required to accept special services or benefits.

II-3.4100 Separate programs. A public entity may offer separate or special programs when necessary to provide individuals with disabilities an equal opportunity to benefit from the programs. Such programs must, however, be specifically designed to meet the needs of the individuals with disabilities for whom they are provided.

ILLUSTRATION 1: Museums generally do not allow visitors to touch exhibits because handling can cause damage to the objects. A municipal museum may offer a special tour for individuals with vision impairments on which they are permitted to touch and handle specific objects on a limited basis. (It cannot, however, exclude a blind person from the standard museum tour.)
ILLUSTRATION 2: A city recreation department may sponsor a separate basketball league for individuals who use wheelchairs.

II-3.4200 Relationship to "program accessibility" requirement. The integrated setting requirement may conflict with the obligation to provide program accessibility, which may not necessarily mandate physical access to all parts of all facilities (see II-5.0000). Provision of services to individuals with disabilities in a different location, for example, is one method of achieving program accessibility. Public entities should make every effort to ensure that alternative methods of providing program access do not result in unnecessary segregation.

ILLUSTRATION: A school system should provide for wheelchair access at schools dispersed throughout its service area so that children who use wheelchairs can attend school at locations comparable in convenience to those available to other children. Also, where "magnet" schools, or schools offering different curricula or instruction techniques are available, the range of choice provided to students with disabilities must be comparable to that offered to other students.

II-3.4300 Right to participate in the regular program. Even if a separate or special program for individuals with disabilities is offered, a public entity cannot deny a qualified individual with a disability participation in its regular program. Qualified individuals with disabilities are entitled to participate in regular programs, even if the public entity could reasonably believe that they cannot benefit from the regular program.

ILLUSTRATION: A museum cannot exclude a person who is blind from a tour because of assumptions about his or her inability to appreciate and benefit from the tour experience. Similarly, a deaf person may not be excluded from a museum concert because of a belief that deaf persons cannot enjoy the music.

The fact that a public entity offers special programs does not affect the right of an individual with a disability to participate in regular programs. The requirements for providing access to the regular program, including the requirement that the individual be "qualified" for the program, still apply.

ILLUSTRATION: Where a State offers special drivers' licenses with limitations or restrictions for individuals with disabilities, an individual with a disability is not eligible for an unrestricted license, unless he or she meets the essential eligibility requirements for the unrestricted license.

BUT: If an individual is qualified for the regular program, he or she cannot be excluded from that program simply because a special program is available.

Individuals with disabilities may not be required to accept special "benefits" if they choose not to do so.

ILLUSTRATION: A State that provides optional special automobile license plates for individuals with disabilities and requires appropriate documentation for eligibility for the special plates cannot require an individual who qualifies for a special plate to present documentation or accept a special plate, if he or she applies for a plate without the special designation.

II-3.4400 Modifications in the regular program. When a public entity offers a special program for individuals with a particular disability, but an individual with that disability elects to participate in the
regular program rather than in the separate program, the public entity may still have obligations to provide an opportunity for that individual to benefit from the regular program. The fact that a separate program is offered may be a factor in determining the extent of the obligations under the regular program, but only if the separate program is appropriate to the needs of the particular individual with a disability.

ILLUSTRATION: If a museum provides a sign language interpreter for one of its regularly scheduled tours, the availability of the signed tour may be a factor in determining whether it would be an undue burden to provide an interpreter for a deaf person who wants to take the tour at a different time. BUT: The availability of the signed tour would not affect the museum's obligation to provide an interpreter for a different tour, or the museum's obligation to provide a different auxiliary aid, such as an assistive listening device, for an individual with impaired hearing who does not use sign language.

II-3.5000 Eligibility criteria

II-3.5100 General. A public entity may not impose eligibility criteria for participation in its programs, services, or activities that either screen out or tend to screen out persons with disabilities, unless it can show that such requirements are necessary for the provision of the service, program, or activity.

ILLUSTRATION 1: The director of a county recreation program prohibits persons who use wheelchairs from participating in county-sponsored scuba diving classes because he believes that persons who use wheelchairs probably cannot swim well enough to participate. An unnecessary blanket exclusion of this nature would violate the ADA.

ILLUSTRATION 2: A community college requires students with certain disabilities to be accompanied to class by attendants, even when such individuals prefer to attend classes unaccompanied. The college also requires individuals with disabilities to provide extensive medical histories, although such histories are not required from other students. Unless the college can demonstrate that it is necessary for some compelling reason to adopt these policies, the policies would not be permitted by the ADA.

II-3.5200 Safety. A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities.

ILLUSTRATION: A county recreation program may require that all participants in its scuba program pass a swimming test, if it can demonstrate that being able to swim is necessary for safe participation in the class. This is permitted even if requiring such a test would tend to screen out people with certain kinds of disabilities.

II-3.5300 Unnecessary inquiries. A public entity may not make unnecessary inquiries into the existence of a disability.

ILLUSTRATION 1: A municipal recreation department summer camp requires parents to fill out a questionnaire and to submit medical documentation regarding their children's ability to participate in various camp activities. The questionnaire is acceptable, if the recreation department can demonstrate that
each piece of information requested is needed to ensure safe participation in camp activities. The Department, however, may not use this information to screen out children with disabilities from admittance to the camp.

ILLUSTRATION 2: An essential eligibility requirement for obtaining a license to practice medicine is the ability to practice medicine safely and competently. State Agency X requires applicants for licenses to practice medicine to disclose whether they have ever had any physical and mental disabilities. A much more rigorous investigation is undertaken of applicants answering in the affirmative than of others. This process violates title II because of the additional burdens placed on individuals with disabilities, and because the disclosure requirement is not limited to conditions that currently impair one's ability to practice medicine.

II-3.5400 Surcharges. Although compliance may result in some additional cost, a public entity may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses.

ILLUSTRATION: A community college provides interpreter services to deaf students, removes a limited number of architectural barriers, and relocates inaccessible courses and activities to more accessible locations. The college cannot place a surcharge on either an individual student with a disability (such as a deaf student who benefited from interpreter services) or on groups of students with disabilities (such as students with mobility impairments who benefited from barrier removal). It may, however, adjust its tuition or fees for all students.

II-3.6000 Reasonable modifications

II-3.6100 General. A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate, however, that the modifications would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

ILLUSTRATION 1: A municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district. In order to install a ramp to the front entrance of a pharmacy, the owner must encroach on the set-back by three feet. Granting a variance in the zoning requirement may be a reasonable modification of town policy.

ILLUSTRATION 2: A county general relief program provides emergency food, shelter, and cash grants to individuals who can demonstrate their eligibility. The application process, however, is extremely lengthy and complex. When many individuals with mental disabilities apply for benefits, they are unable to complete the application process successfully. As a result, they are effectively denied benefits to which they are otherwise entitled. In this case, the county has an obligation to make reasonable modifications to its application process to ensure that otherwise eligible individuals are not denied needed benefits. Modifications to the relief program might include simplifying the application process or providing applicants who have mental disabilities with individualized assistance to complete the process.
ILLUSTRATION 3: A county ordinance prohibits the use of golf carts on public highways. An individual with a mobility impairment uses a golf cart as a mobility device. Allowing use of the golf cart as a mobility device on the shoulders of public highways where pedestrians are permitted, in limited circumstances that do not involve a significant risk to the health or safety of others, is a reasonable modification of the county policy.

ILLUSTRATION 4: C, a person with a disability, stops at a rest area on the highway. C requires assistance in order to use the toilet facilities and his only companion is a person of the opposite sex. Permitting a person of the opposite sex to assist C in a toilet room designated for one sex may be a required reasonable modification of policy.

ILLUSTRATION 5: S, an individual with an environmental illness, requests a public entity to adopt a policy prohibiting the use of perfume or other scented products by its employees who come into contact with the public. Such a requirement is not a "reasonable" modification of the public entity's personnel policy.

II-3.6200 Personal services and devices. A public entity is not required to provide individuals with disabilities with personal or individually prescribed devices, such as wheelchairs, prescription eyeglasses, or hearing aids, or to provide services of a personal nature, such as assistance in eating, toileting, or dressing. Of course, if personal services or devices are customarily provided to the individuals served by a public entity, such as a hospital or nursing home, then these personal services should also be provided to individuals with disabilities.

II-3.7000 Contracting and licensing

II-3.7100 Contracting. A public entity may not discriminate on the basis of disability in contracting for the purchase of goods and services.

ILLUSTRATION 1: A municipal government may not refuse to contract with a cleaning service company to clean its government buildings because the company is owned by an individual with disabilities or employs individuals with disabilities.

II-3.7200 Licensing. A public entity may not discriminate on the basis of disability in its licensing, certification, and regulatory activities. A person is a "qualified individual with a disability" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification. The phrase "essential eligibility requirements" is particularly important in the context of State licensing requirements. While many programs and activities of public entities do not have significant qualification requirements, licensing programs often do require applicants to demonstrate specific skills, knowledge, and abilities. Public entities may not discriminate against qualified individuals with disabilities who apply for licenses, but may consider factors related to the disability in determining whether the individual is "qualified."
ILLUSTRATION: An individual is not "qualified" for a driver's license unless he or she can operate a motor vehicle safely. A public entity may establish requirements, such as vision requirements, that would exclude some individuals with disabilities, if those requirements are essential for the safe operation of a motor vehicle.

BUT: The public entity may only adopt "essential" requirements for safe operation of a motor vehicle. Denying a license to all individuals who have missing limbs, for example, would be discriminatory if an individual who could operate a vehicle safely without use of the missing limb were denied a license. A public entity, however, could impose appropriate restrictions as a condition to obtaining a license, such as requiring an individual who is unable to use foot controls to use hand controls when operating a vehicle.

A public entity does not have to lower or eliminate licensing standards that are essential to the licensed activity to accommodate an individual with a disability. Whether a specific requirement is "essential" will depend on the facts of the particular case. Where a public entity administers licensing examinations, it must provide auxiliary aids for applicants with disabilities and administer the examinations in accessible locations.

In addition, a public entity may not establish requirements for the programs or activities of licensees that would result in discrimination against qualified individuals with disabilities. For example, a public entity's safety standards may not require the licensee to discriminate against qualified individuals with disabilities in its employment practices.

ILLUSTRATION: A State prohibits the licensing of transportation companies that employ individuals with missing limbs as drivers. XYZ company refuses to hire an individual with a missing limb who is "qualified" to perform the essential functions of the job, because he is able to drive safely with hand controls. The State's licensing requirements violate title II.

BUT: The State is not accountable for discrimination in the employment or other practices of XYZ company, if those practices are not the result of requirements or policies established by the State.

Although licensing standards are covered by title II, the licensee's activities themselves are not covered. An activity does not become a "program or activity" of a public entity merely because it is licensed by the public entity.

**II-3.8000 Illegal use of drugs.** Discrimination based on an individual's current illegal use of drugs is not prohibited (see II-2.3000). Although individuals currently using illegal drugs are not protected from discrimination, the ADA does prohibit denial of health services, or services provided in connection with drug rehabilitation, to an individual on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services.

ILLUSTRATION 1: A hospital emergency room may not refuse to provide emergency services to an individual because the individual is using drugs.

ILLUSTRATION 2: A municipal medical facility that specializes in care of burn patients may not refuse to treat an individual's burns on the grounds that the individual is illegally using drugs. Because abstention from the use of drugs is an essential condition for participation in some drug rehabilitation...
programs, and may be a necessary requirement in inpatient or residential settings, a drug rehabilitation or treatment program may deny participation to individuals who use drugs while they are in the program.

ILLUSTRATION: A residential drug and alcohol treatment program may expel an individual for using drugs in a treatment center.

II-3.9000 Discrimination on the basis of association. A State or local government may not discriminate against individuals or entities because of their known relationship or association with persons who have disabilities. This prohibition applies to cases where the public entity has knowledge of both the individual's disability and his or her relationship to another individual or entity. In addition to familial relationships, the prohibition covers any type of association between the individual or entity that is discriminated against and the individual or individuals with disabilities, if the discrimination is actually based on the disability.

ILLUSTRATION 1: A county recreation center may not refuse admission to a summer camp program to a child whose brother has HIV disease.

ILLUSTRATION 2: A local government could not refuse to allow a theater company to use a school auditorium on the grounds that the company has recently performed at an HIV hospice.

ILLUSTRATION 3: If a county-owned sports arena refuses to admit G, an individual with cerebral palsy, as well as H (his sister) because G has cerebral palsy, the arena would be illegally discriminating against H on the basis of her association with G.

II-3.10000 Maintenance of accessible features. Public entities must maintain in working order equipment and features of facilities that are required to provide ready access to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are not prohibited.

Where a public entity must provide an accessible route, the route must remain accessible and not blocked by obstacles such as furniture, filing cabinets, or potted plants. An isolated instance of placement of an object on an accessible route, however, would not be a violation, if the object is promptly removed. Similarly, accessible doors must be unlocked when the public entity is open for business.

Mechanical failures in equipment such as elevators or automatic doors will occur from time to time. The obligation to ensure that facilities are readily accessible to and usable by individuals with disabilities would be violated, if repairs are not made promptly or if improper or inadequate maintenance causes repeated and persistent failures.

ILLUSTRATION 1: It would be a violation for a building manager of a three-story building to turn off the only passenger elevator in order to save energy during the hours when the building is open.

ILLUSTRATION 2: A public high school has a lift to provide access for persons with mobility impairments to an auditorium stage. The lift is not working. If the lift normally is functional and reasonable steps have been taken to repair the lift, then the school has not violated its obligations to
maintain accessible features. On the other hand, if the lift frequently does not work and reasonable steps have not been taken to maintain the lift, then the school has violated the maintenance of accessible features requirement.

ILLUSTRATION 3: Because of lack of space, a city office manager places tables and file cabinets in the hallways, which interferes with the usability of the hallway by individuals who use wheelchairs. By rendering a previously accessible hallway inaccessible, the city has violated the maintenance requirement, if that hallway is part of a required accessible route.

II-3.11000 Retaliation or coercion. Individuals who exercise their rights under the ADA, or assist others in exercising their rights, are protected from retaliation. The prohibition against retaliation or coercion applies broadly to any individual or entity that seeks to prevent an individual from exercising his or her rights or to retaliate against him or her for having exercised those rights. Any form of retaliation or coercion, including threats, intimidation, or interference, is prohibited if it interferes with the exercise of rights under the Act.

ILLUSTRATION 1: A, a private individual, harasses X, an individual with cerebral palsy, in an effort to prevent X from attending a concert in a State park. A has violated the ADA.

ILLUSTRATION 2: A State tax official delays a tax refund for M, because M testified in a title II grievance proceeding involving the inaccessibility of the tax information office. The State has illegally retaliated against M in violation of title II.

II-3.12000 Smoking. A public entity may prohibit smoking, or may impose restrictions on smoking, in its facilities.

II-4.0000 EMPLOYMENT

Regulatory references: 28 CFR 35.140.

II-4.1000 General. Beginning January 26, 1992, title II prohibits all public entities, regardless of size of workforce, from discriminating in their employment practices against qualified individuals with disabilities.

II-4.2000 Relationship among title II and other Federal laws that prohibit employment discrimination by public entities on the basis of disability. In addition to title II's employment coverage, title I of the ADA and section 504 of the Rehabilitation Act of 1973 prohibit employment discrimination against qualified individuals with disabilities by certain public entities. Title I of the ADA, which is primarily enforced by the Equal Employment Opportunity Commission (EEOC), prohibits job discrimination --

1) Effective July 26, 1992, by State and local employers with 25 or more employees; and
2) Effective July 26, 1994, by State and local employers with 15 or more employees. Section 504 of the Rehabilitation Act prohibits discrimination in employment in programs or activities that receive Federal financial assistance, including federally funded State or local programs or activities. Each Federal agency that extends financial assistance is responsible for enforcement of section 504 in the programs it funds.

What standards are used to determine compliance under title II? For those public entities that are subject to title I of the ADA, title II adopts the standards of title I. In all other cases, the section 504 standards for employment apply. On October 29, 1992, legislation reauthorizing the Rehabilitation Act of 1973 was signed by the President. The law amended section 504 to conform its provisions barring employment discrimination to those applied under title I of the ADA. Thus, employment standards under section 504 are now identical to those under title I.

II-4.3000 Basic employment requirements. The following sections set forth examples of the basic title II employment requirements. Additional information on employment issues is available in "A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act," issued by the EEOC. (For information about obtaining this document or other information about title I, contact the EEOC at 800-669-3362 (voice) or 800-800-3302 (TDD)).

II-4.3100 Nondiscriminatory practices and policies. As of January 26, 1992, all public entities must ensure that their employment practices and policies do not discriminate on the basis of disability against qualified individuals with disabilities in every aspect of employment, including recruitment, hiring, promotion, demotion, layoff and return from layoff, compensation, job assignments, job classifications, paid or unpaid leave, fringe benefits, training, and employer-sponsored activities, including recreational or social programs.

II-4.3200 Reasonable accommodation. All public entities must make "reasonable accommodation" to the known physical or mental limitations of otherwise qualified applicants or employees with disabilities, unless the public entity can show that the accommodation would impose an "undue hardship" on the operation of its program.

"Reasonable accommodation" means any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. Examples include --

1) Acquiring or modifying equipment or devices;

2) Job restructuring;

3) Part-time or modified work schedules;

4) Providing readers or interpreters;

5) Making the workplace accessible to and usable by individuals with disabilities.
However, any particular change or adjustment would not be required if, under the circumstances involved, it would result in an undue hardship.

"Undue hardship" means significant difficulty or expense relative to the operation of a public entity's program. Where a particular accommodation would result in an undue hardship, the public entity must determine if another accommodation is available that would not result in an undue hardship.

**II-4.3300 Nondiscrimination in selection criteria and the administration of tests.** Public entities may not use employment selection criteria that have the effect of subjecting individuals with disabilities to discrimination. In addition, public entities are required to ensure that, where necessary to avoid discrimination, employment tests are modified so that the test results reflect job skills or aptitude or whatever the test purports to measure, rather than the applicant's or employee's hearing, visual, speaking, or manual skills (unless the test is designed to measure hearing, visual, speaking, or manual skills).

**II-4.3400 Preemployment medical examinations and medical inquiries.** During the hiring process, public entities may ask about an applicant's ability to perform job-related functions but may not ask whether an applicant is disabled or about the nature or severity of an applicant's disability.

Public entities may not conduct preemployment medical examinations, but they may condition a job offer on the results of a medical examination conducted prior to an individual's entrance on duty if --

1) All entering employees in the same job category, regardless of disability, are required to take the same medical examination, and

2) The results of the medical examination are not used to impermissibly discriminate on the basis of disability.

The results of a medical entrance examination must be kept confidential and maintained in separate medical files.

**II-5.0000 PROGRAM ACCESSIBILITY**

*Regulatory references:* 28 CFR 35.149-35.150.

**II-5.1000 General.** A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all existing facilities of a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.

ILLUSTRATION 1: When a city holds a public meeting in an existing building, it must provide ready access to, and use of, the meeting facilities to individuals with disabilities. The city is not required to make all areas in the building accessible, as long as the meeting room is accessible. Accessible telephones and bathrooms should also be provided where these services are available for use of meeting attendees.
ILLUSTRATION 2: D, a defendant in a civil suit, has a respiratory condition that prevents her from climbing steps. Civil suits are routinely heard in a courtroom on the second floor of the courthouse. The courthouse has no elevator or other means of access to the second floor. The public entity must relocate the proceedings to an accessible ground floor courtroom or take alternative steps, including moving the proceedings to another building, in order to allow D to participate in the civil suit.

ILLUSTRATION 3: A State provides ten rest areas approximately 50 miles apart along an interstate highway. Program accessibility requires that an accessible toilet room for each sex with at least one accessible stall, or a unisex bathroom, be provided at each rest area.

*Is a public entity relieved of its obligation to make its programs accessible if no individual with a disability is known to live in a particular area?* No. The absence of individuals with disabilities living in an area cannot be used as the test of whether programs and activities must be accessible.

ILLUSTRATION: A rural school district has only one elementary school and it is located in a one-room schoolhouse accessible only by steps. The school board asserts that there are no students in the district who use wheelchairs. Students, however, who currently do not have a disability may become individuals with disabilities through, for example, accidents or disease. In addition, persons other than students, such as parents and other school visitors, may be qualified individuals with disabilities who are entitled to participate in school programs. Consequently, the apparent lack of students with disabilities in a school district's service area does not excuse the school district from taking whatever appropriate steps are necessary to ensure that its programs, services, and activities are accessible to qualified individuals with disabilities.

*Does the program accessibility requirement prevent a public entity from renting existing inaccessible space to a private entity?* Not necessarily. For example, if a State leases space to a public accommodation in a downtown office building in a purely commercial transaction, i.e., the private entity does not provide any services as part of a State program, the State may rent out inaccessible space without violating its program access requirement. The private entity, though, would be responsible for compliance with title III. On the other hand, if a State highway authority leases a facility in one of its highway rest areas to a privately owned restaurant, the public entity would be responsible for making the space accessible, because the restaurant is part of the State's program of providing services to the motoring public. The private entity operating the restaurant would have an independent obligation to meet the requirements of title III.

*Can back doors and freight elevators be used to satisfy the program accessibility requirement?* Yes, but only as a last resort and only if such an arrangement provides accessibility comparable to that provided to persons without disabilities, who generally use front doors and passenger elevators. For example, a back door is acceptable if it is kept unlocked during the same hours the front door remains unlocked; the passageway to and from the floor is accessible, well-lit, and neat and clean; and the individual with a mobility impairment does not have to travel excessive distances or through nonpublic areas such as kitchens and storerooms to gain access. A freight elevator would be acceptable if it were upgraded so as to be usable by passengers generally and if the passageways leading to and from the elevator are well-lit and neat and clean.
Are there any limitations on the program accessibility requirement? Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

II-5.2000 Methods for providing program accessibility. Public entities may achieve program accessibility by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. The public entity may, however, pursue alternatives to structural changes in order to achieve program accessibility. Nonstructural methods include acquisition or redesign of equipment, assignment of aides to beneficiaries, and provision of services at alternate accessible sites.

ILLUSTRATION 1: The office building housing a public welfare agency may only be entered by climbing a flight of stairs. If an individual with a mobility impairment seeks information about welfare benefits, the agency can provide the information in an accessible ground floor location or in another accessible building.

ILLUSTRATION 2: A public library's open stacks are located on upper floors having no elevator. As an alternative to installing a lift or elevator, library staff may retrieve books for patrons who use wheelchairs. The aides must be available during the operating hours of the library.

ILLUSTRATION 3: A public university that conducts a French course in an inaccessible building may relocate the course to a building that is readily accessible.

When choosing a method of providing program access, a public entity must give priority to the one that results in the most integrated setting appropriate to encourage interaction among all users, including individuals with disabilities.

ILLUSTRATION 4: A municipal performing arts center provides seating at two prices -- inexpensive balcony seats and more expensive orchestra seats. All of the accessible seating is located on the higher priced orchestra level. In lieu of providing accessible seating on the balcony level, the city must make a reasonable number of accessible orchestra-level seats available at the lower price of balcony seats.

ILLUSTRATION 5: A rural, one-room library has an entrance with several steps. The library can make its services accessible in several ways. It may construct a simple wooden ramp quickly and at relatively low cost. Alternatively, individuals with mobility impairments may be provided access to the library's services through a bookmobile, by special messenger service, through use of clerical aides, or by any other method that makes the resources of the library "readily accessible." Priority should be given,
however, to constructing a ramp because that is the method that offers library services to individuals with disabilities and others in the same setting.

*Is carrying an individual with a disability considered an acceptable method of achieving program access?* Generally, it is not. Carrying persons with mobility impairments to provide program accessibility is permitted in only two cases. First, when program accessibility in existing facilities can be achieved only through structural alterations (that is, physical changes to the facilities), carrying may serve as a temporary expedient until construction is completed. Second, carrying is permitted in manifestly exceptional cases if (a) carriers are formally instructed on the safest and least humiliating means of carrying and (b) the service is provided in a reliable manner. Carrying is contrary to the goal of providing accessible programs, which is to foster independence.

*How is "program accessibility" under title II different than "readily achievable barrier removal" under title III?* Unlike private entities under title III, public entities are not required to remove barriers from each facility, even if removal is readily achievable. A public entity must make its "programs" accessible. Physical changes to a building are required only when there is no other feasible way to make the program accessible.

In contrast, barriers must be removed from places of public accommodation under title III where such removal is "readily achievable," without regard to whether the public accommodation's services can be made accessible through other methods.

**II-5.3000 Curb ramps.** Public entities that have responsibility or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps where pedestrian walkways cross curbs. Public entities must give priority to walkways serving State and local government offices and facilities, transportation, places of public accommodation, and employees, followed by walkways serving other areas. This schedule must be included as part of a transition plan (see II-8.3000).

To promote both efficiency and accessibility, public entities may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb. However, public entities are not necessarily required to construct a curb ramp at every such intersection.

Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a marginally longer route. In addition, the fundamental alteration and undue burdens limitations may limit the number of curb ramps required. To achieve or maintain program accessibility, it may be appropriate to establish an ongoing procedure for installing curb ramps upon request in areas frequented by individuals with disabilities as residents, employees, or visitors.

*What are walkways?* Pedestrian walkways include locations where access is required for use of public transportation, such as bus stops that are not located at intersections or crosswalks.

**II-5.4000 Existing parking lots or garages.** A public entity should provide an adequate number of accessible parking spaces in existing parking lots or garages over which it has jurisdiction.
II-5.5000 Historic preservation programs. Special program accessibility requirements and limitations apply to historic preservation programs. Historic preservation programs are programs conducted by a public entity that have preservation of historic properties as a primary purpose. An historic property is a property that is listed or eligible for listing in the National Register of Historic Places or a property designated as historic under State or local law.

In achieving program accessibility in historic preservation programs, a public entity must give priority to methods that provide physical access to individuals with disabilities. Physical access is particularly important in an historic preservation program, because a primary benefit of the program is uniquely the experience of the historic property itself.

Are there any special limitations on measures required to achieve program accessibility in historic preservation programs in addition to the general fundamental alteration / undue financial and administrative burdens limitations? Yes, a public entity is not required to take any action that would threaten or destroy the historic significance of an historic property. In cases where physical access cannot be provided because of either this special limitation, or because an undue financial burden or fundamental alteration would result, alternative measures to achieve program accessibility must be undertaken.

ILLUSTRATION: Installing an elevator in an historic house museum to provide access to the second floor bedrooms would destroy architectural features of historic significance on the first floor. Providing an audio-visual display of the contents of the upstairs rooms in an accessible location on the first floor would be an alternative way of achieving program accessibility.

Does the special limitation apply to programs that are not historic preservation programs, but just happen to be located in historic properties? No. In these cases, nonstructural methods of providing program accessibility, such as relocating all or part of a program or making home visits, are available to ensure accessibility, and no special limitation protecting the historic structure is provided.

II-5.6000 Time periods for achieving program accessibility. Public entities must achieve program accessibility by January 26, 1992. If structural changes are needed to achieve program accessibility, they must be made as expeditiously as possible, but in no event later than January 26, 1995. This three-year time period is not a grace period; all changes must be accomplished as expeditiously as possible. A public entity that employs 50 or more persons must develop a transition plan by July 26, 1992, setting forth the steps necessary to complete such changes. For guidance on transition plan requirements, see II-8.3000.

II-6.0000 NEW CONSTRUCTION AND ALTERATIONS

Regulatory references: 28 CFR 35.151.

II-6.1000 General. All facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity must be readily accessible and usable by individuals with disabilities, if the construction or alteration is begun after January 26, 1992.
What is "readily accessible and usable?" This means that the facility must be designed, constructed, or altered in strict compliance with a design standard. The regulation gives a choice of two standards that may be used (see II-6.2000).

II-6.2000 Choice of design standard: UFAS or ADAAG

II-6.2100 General. Public entities may choose from two design standards for new construction and alterations. They can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), which is the standard that must be used for public accommodations and commercial facilities under title III of the ADA. If ADAAG is chosen, however, public entities are not entitled to the elevator exemption (which permits certain buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

Many public entities that are recipients of Federal funds are already subject to UFAS, which is the accessibility standard referenced in most section 504 regulations.

On December 21, 1992, the Access Board published proposed title II accessibility guidelines that will generally adopt ADAAG for State and local government facilities. The proposed guidelines also set specific requirements for judicial, legislative, and regulatory facilities; detention and correctional facilities; accessible residential housing; and public rights-of-way. The proposed guidelines are subject to a 90-day comment period. It is anticipated that the Department of Justice will amend its title II rule to eliminate the choice between ADAAG and UFAS and, instead, mandate that public entities follow the amended ADAAG.

Which standard is stricter, UFAS or ADAAG? The many differences between the standards are highlighted below. In some areas, UFAS may appear to be more stringent. In other areas ADAAG may appear to be more stringent. Because of the many differences, one standard is not stricter than the other.

Can a public entity follow ADAAG on one floor of a new building and then follow UFAS on the next floor? No. Each facility or project must follow one standard completely.

Can a public entity follow UFAS for one alteration project and then follow ADAAG for another alteration project in the same building? No. All alterations in the same building must be done in accordance with the same standard.

What if neither ADAAG nor UFAS contain specific standards for a particular type of facility? In such cases the technical requirements of the chosen standard should be applied to the extent possible. If no standard exists for particular features, those features need not comply with a particular design standard. However, the facility must still be designed and operated to meet other title II requirements, including program accessibility (see II-5.0000).

ILLUSTRATION 1: A public entity is designing and constructing a playground. Because there are no UFAS or ADAAG standards for playground equipment, the equipment need not comply with any specific design standard. The title II requirements for equal opportunity and program accessibility, however, may
obligate the public entity to provide an accessible route to the playground, some accessible equipment, and an accessible surface for the playground.

ILLUSTRATION 2: A public entity is designing and constructing a new baseball stadium that will feature a photographers' moat running around the perimeter of the playing field. While there are no specific standards in either ADAAG or UFAS for either dugouts or photographer's moats, the chosen standard should be applied to the extent that it contains appropriate technical standards. For example, an accessible route must be provided and any ramps or changes in level must meet the chosen standard. The public entity may have additional obligations under other title II requirements.

II-6.3000 Major differences between ADAAG and UFAS. Set forth below is a summary of some of the major differences between ADAAG and UFAS.

II-6.3100 General principles

1) Work areas

ADAAG: Requires that areas used only by employees as work areas be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. There is, then, only a limited application of the standards to work areas (§4.1.1(3)).

UFAS: Contains no special limited requirement for work areas. The UFAS standards apply (as provided in the Architectural Barriers Act) in all areas frequented by the public or which "may result in employment ... of physically handicapped persons" (§1).

2) Equivalent facilitation

ADAAG: Departures from particular standards are permitted where alternatives will provide substantially equivalent or greater access (§2.2).

UFAS: UFAS itself does not contain a statement concerning equivalent facilitation. However, section 504 regulations, as well as the Department's title II regulation (28 CFR 35.151(c)), state that departures are permitted where it is "clearly evident that equivalent access" is provided.

3) Exemption from application of standards in new construction

ADAAG: Contains a structural impracticability exception for new construction: full compliance with the new construction standards is not required in the rare case where the terrain prevents compliance (§4.1.1(5)(a)).

UFAS: Does not contain a structural impracticability exception (or any other exception) for new construction.

4) Exemption from application of standards in alterations
ADAAG: For alterations, application of standards is not required where it would be "technically infeasible" (i.e., where application of the standards would involve removal of a load-bearing structural member or where existing physical or site restraints prevent compliance). Cost is not a factor (§4.1.6(1)(j)).

UFAS: Application of standards is not required for alterations where "structurally impracticable," i.e., where removal of a load-bearing structural member is involved or where the result would be an increased cost of 50 percent or more of the value of the element involved (§§4.1.6(3); 3.5 ("structural impractibility")). Cost is a factor. (Note that the similar term, "structural impracticability," is used in ADAAG (see item #3 above), but in ADAAG it is used in relation to new construction. In UFAS, it is used in relation to alterations, and it has a different meaning.)

5) Alterations triggering additional requirements

ADAAG: Alterations to primary function areas (where major activities take place) trigger a "path of travel" requirement, that is, a requirement to make the path of travel from the entrance to the altered area - and telephones, restrooms, and drinking fountains serving the altered area -- accessible (§4.1.6(2)). But, under the Department of Justice title III rule, a public entity is not required to spend more than 20% of the cost of the original alteration on making the path of travel accessible, even if this cost limitation results in less than full accessibility (28 CFR 36.403(f)).

UFAS: If a building undergoes a "substantial alteration" (where the total cost of all alterations in a 12-month period amounts to 50% or more of the value of the building), the public entity must provide an accessible route from public transportation, parking, streets, and sidewalks to all accessible parts of the building; an accessible entrance; and accessible restrooms (§4.1.6(3)).

6) Additions

ADAAG: Each addition to an existing building is regarded as an alteration subject to the ADAAG alterations requirements (including triggering of path of travel obligations, if applicable). If the addition does not have an accessible entrance, the path of travel obligation may require an accessible route from the addition through the existing building, including its entrance and exterior approaches, subject to the 20% disproportionality limitation. Moreover, to the extent that a space or element is newly constructed as part of an addition, it is also regarded as new construction and must comply with the applicable new construction provisions of ADAAG (§4.1.5).

UFAS: Has specific requirements for additions, including requirements for entrances, routes, restrooms, and common areas. An accessible route from the addition through the existing building, including its entrance, is required if the addition does not have an accessible entrance (§4.1.5).

II-6.3200 Elements. The following requirements apply in new construction, unless otherwise indicated.

1) Van parking
ADAAG: One in every eight accessible spaces must be wide enough and high enough for a van lift to be deployed. The space must be marked as "van accessible" with a supplementary sign. Alternatively, "universal parking" is permitted, in which all spaces can accommodate van widths (§4.1.2(5)(b)).

UFAS: Van parking is not required. Universal parking is not addressed.

2) Valet parking

ADAAG: Facilities with valet parking must have an accessible passenger loading zone on an accessible route to the exterior of the facility (§4.1.2(5)(c)).

UFAS: No requirements for valet parking.

3) Signs

ADAAG:

* Signs designating permanent rooms and spaces (men's and women's rooms; room numbers; exit signs) must have raised and Brailled letters; must comply with finish and contrast standards; and must be mounted at a certain height and location (§4.1.3(16)(a)).

* Signs that provide direction to or information about functional spaces of a building (e.g. "cafeteria this way;" "copy room") need not comply with requirements for raised and Brailled letters, but they must comply with requirements for character proportion, finish, and contrast. If suspended or projected overhead, they must also comply with character height requirements (§4.1.3(16)(b)).

* Building directories and other signs providing temporary information (such as current occupant's name) do not have to comply with any ADAAG requirements (§4.1.3(16)).

* Has requirements not only for the standard international symbol of accessibility, but also for symbols of accessibility identifying volume control telephones, text telephones, and assistive listening systems (§§4.1.2(7); 4.30.7).

UFAS:

* Signs designating permanent rooms and spaces must be raised (Braille is not required) and must be mounted at a certain height and location (§4.1.2(15)).

* All other signs (including temporary signs) must comply with requirements for letter proportion and color contrast, but not with requirements for raised letters or mounting height (§4.1.2(15)).

* Requires only the standard international symbol of accessibility (§4.30.5).

4) Entrances
ADAAG: At least 50 percent of all public entrances must be accessible with certain qualifications. In addition, there must be accessible entrances to enclosed parking, pedestrian tunnels, and elevated walkways ($4.1.3(8)).

UFAS: At least one principal entrance at each grade floor level must be accessible. In addition, there must be an accessible entrance to transportation facilities, passenger loading zones, accessible parking, taxis, streets, sidewalks, and interior accessible areas, if the building has entrances that normally serve those functions ($4.1.2(8)) . (This latter requirement could result in all entrances having to be accessible in many cases.)

5) Areas of rescue assistance or places of refuge

ADAAG: Areas of rescue assistance (safe areas in which to await help in an emergency) are generally required on each floor, other than the ground floor, of a multistory building. An accessible egress route or an area of rescue assistance is required for each exit required by the local fire code. Specific requirements are provided for such features as location, size, stairway width, and two-way communications. Areas of rescue assistance are not required in buildings with supervised automatic sprinkler systems, nor are they required in alterations ($4.1.3(9))

UFAS: Accessible routes must serve as a means of egress or connect to an accessible "place of refuge." No specific requirements for places of refuge are included. Rather, UFAS refers to local administrative authority for specific provisions on location, size, etc. UFAS requires more than one means of accessible egress when more than one exit is required ($4.3.10).

6) Water fountains

ADAAG: Where there is more than one fountain on a floor, 50% must be accessible to persons using wheelchairs. If there is only one drinking fountain on a floor, it must be accessible both to individuals who use wheelchairs and to individuals who have trouble bending or stooping (for example, a "hi-lo fountain" or fountain and water cooler may be used) ($4.1.3(10)).

UFAS: Approximately 50% on each floor must be accessible. If there is only one fountain on a floor, it must be accessible to individuals who use wheelchairs ($4.1.3(9)).

7) Storage and shelves

ADAAG: One of each type of fixed storage facility must be accessible. Self-service shelves and displays must be on an accessible route but need not comply with reach-range requirements ($4.1.3(12)).

UFAS: Has the same requirements as ADAAG for fixed storage, but does not contain the reach requirement exemption for self-service shelves and displays ($4.1.2(11)).

8) Volume controls

ADAAG: All accessible public phones must be equipped with volume controls. In addition, 25%, but never less than one, of all other public phones must have volume controls ($4.1.3(17)(b)).
UFAS: At least one accessible telephone must have a volume control (§4.1.2(16)(b)).

9) Telecommunication Devices for the Deaf (TDD’s)

ADAAG: One TDD (also known as a "text telephone") must be provided inside any building that has at least one interior pay phone and four or more public pay telephones, counting both interior and exterior phones. In addition, one TDD or text telephone (per facility) must be provided whenever there is an interior public pay phone in a stadium or arena; convention center; hotel with a convention center; covered shopping mall; or hospital emergency, recovery, or waiting room (§4.1.3(17)(c)).

UFAS: No requirement for TDD's.

10) Assembly areas

ADAAG:

* Wheelchair seating: Requirements triggered in any assembly area with fixed seating that seats four or more people. The number of wheelchair locations required depends upon the size of the assembly area. When the area has over 300 seats, there are requirements for dispersal of wheelchair seating. ADAAG also contains requirements for aisle seats without armrests (or with removable armrests) and fixed seating for companions located adjacent to each wheelchair seating area (§4.1.3(19)(a)).

* Assistive listening systems: Certain fixed seating assembly areas that accommodate 50 or more people or have audio-amplification systems must have permanently installed assistive listening systems. Other assembly areas must have permanent systems or an adequate number of electrical outlets or other wiring to support a portable system. A special sign indicating the availability of the system is required. The minimum number of receivers must be equal to four percent of the total number of seats, but never less than two (§4.1.3(19)(b)).

UFAS:

* Wheelchair seating: No requirements for wheelchair seating are triggered, unless the assembly area has 50 or more seats. Seating must be dispersed and provide comparable lines of sight (§4.1.2(18)(a)).

* Assistive listening systems: Assembly areas with audio-amplification systems must have a listening system that serves a reasonable number of people, but at least two. If it has no amplification system or is used primarily as meeting or conference room, it must have a permanent or portable system. No special signs are required (§4.1.2(18)(b)).

11) Automated teller machines (ATM's)

ADAAG: Where ATM's are provided, each must be accessible, except that only one need comply when two or more ATM's are at the same location. Accessible machines must have, among other features, accessible controls and instructions and other information accessible to persons with sight impairments (§4.1.3(20)).
UFAS: No requirements for ATM's.

12) Bathrooms

ADAAG: Every public and common use bathroom must be accessible. Generally only one stall must be accessible (standard five-by-five feet). When there are six or more stalls, there must be one accessible stall and one stall that is three feet wide (§§4.1.3(11); 4.22.4).

UFAS: Same general requirements but no requirement for an additional three-foot-wide stall (§§4.1.2(10); 4.22.4).

13) Detectable warnings

ADAAG: Required on curb ramps, hazardous vehicular areas, and reflecting pools, but not on doors to hazardous areas. The warnings must be truncated domes (§4.29).

UFAS: "Tactile warnings" (uses different terminology) required only on doors to hazardous areas. Must be a textured surface on the door handle or hardware (§4.29).

14) Carpet and carpet tile

ADAAG: Same standards for carpet and carpet tile: maximum pile height of 1/2" (§4.5.3).

UFAS: Carpet must have maximum pile height of 1/2". Carpet tile must have maximum combined thickness of pile, cushion, and backing height of 1/2" (§4.5.3).

15) Curb ramps

ADAAG: Curb ramps must have detectable warnings (which must be raised truncated domes) (§4.7.7).

UFAS: No requirement for detectable warnings on curb ramps.

16) Elevator hoistway floor designations and car controls

ADAAG: Must have raised and Brailled characters (§§4.10.5; 4.10.12).

UFAS: Must have raised characters; no requirement for Braille (§§4.10.5; 4.10.12).

17) Visual alarms

ADAAG: Contains details about features required on visual alarms for individuals with hearing impairments, including type of lamp, color, intensity, and location. Flash rate must be at a minimum of 1Hz and maximum of 3Hz (§4.28.3).

UFAS: Contains much less detail. Allows faster flash rate of up to 5Hz (§4.28.3).
18) Elevators and platform lifts in new construction and alterations

ADAAG: The elevator exemption for two-story places of public accommodation or commercial facilities does not apply to buildings and facilities subject to title II. Therefore, elevators are required in all new multilevel buildings or facilities, but vertical access to elevator pits, elevator penthouses, mechanical rooms, and piping or equipment catwalks is not required. Platform lifts may be used instead of elevators under certain conditions in new construction and may always be used in alterations (§4.1.3(5)). Individuals must be able to enter unassisted, operate, and exit the lift without assistance (4.11.3).

UFAS: Has same general requirement for elevators and exceptions similar to those in ADAAG. Platform lifts may be substituted for elevators in new construction or alterations "if no other alternative is feasible" (§4.1.2(5)). Lifts must facilitate unassisted entry and exit (but not "operation" of the lift as in ADAAG) (§4.11.3).

II-6.3300 Types of facilities

1) Historic buildings

ADAAG: Contains procedures for buildings eligible for listing in the National Register of Historic Places under the National Historic Preservation Act and for historic buildings designated under State or local law (§4.1.7).

UFAS: Contains requirements for buildings eligible for listing in the National Register of Historic Places under the National Historic Preservation Act that are also subject to the Architectural Barriers Act. UFAS does not contain provisions applicable to buildings and facilities that are designated as "historic" under State or local law. (Under title II, the UFAS provisions may be applied to any building that is eligible for listing on the National Register of Historic Places, regardless of whether it is also subject to the Architectural Barriers Act.) (§4.1.7).

2) Residential facilities/transient lodging

ADAAG:

* Hotels, motels, dormitories, and other similar establishments: Four percent of the first 100 rooms and approximately two percent of rooms in excess of 100 must be accessible to both persons with hearing impairments (i.e., contain visual alarms, visual notification devices, volume-control telephones, and an accessible electrical outlet for a text telephone) and to persons with mobility impairments. Moreover, a similar percentage of additional rooms must be accessible to persons with hearing impairments. In addition, where there are more than 50 rooms, approximately one percent of rooms must be accessible rooms with a special roll-in/transfer shower. There are special provisions for alterations (§§9.1-9.4).

* Homeless shelters, halfway houses, and similar social service establishments: Homeless shelters and other social service entities must provide the same percentage of accessible sleeping accommodations as
above. At least one type of amenity in each common area must be accessible. Alterations are subject to less stringent standards (§9.5).

UFAS: Contains requirements for residential occupancies with technical requirements for "dwelling units." No requirements for sleeping rooms for individuals with hearing impairments. No requirements for roll-in showers as in ADAAG. No standards for alterations (§§4.1.4(11); 4.34).

3) Restaurants

ADAAG: In restaurants, generally all dining areas and five percent of fixed tables (but not less than one) must be accessible. While raised or sunken dining areas must be accessible, inaccessible mezzanines are permitted under certain conditions. Contains requirements for counters and bars, access aisles, food service lines, tableware and condiment areas, raised speaker's platforms, and vending machine areas (but not controls). Contains some less stringent requirements for alterations (§5).

UFAS: Less detailed requirements. Does not address counters and bars. Raised platforms are allowed if same service and decor are provided. Vending machines and controls are covered. No special, less stringent requirements for alterations (§5).

4) Medical or health care facilities

ADAAG: In medical care facilities, all public and common use areas must be accessible. In general purpose hospitals and in psychiatric and detoxification facilities, 10 percent of patient bedrooms and toilets must be accessible. The required percentage is 100 percent for special facilities treating conditions that affect mobility, and 50 percent for long-term care facilities and nursing homes. Uses terms clarified by the Department of Health and Human Services to describe types of facilities. Some descriptive information was added. Contains special, less stringent requirements for alterations (§6). UFAS: Uses different terms to describe types of facilities. Required clearances in rooms exceed ADAAG requirements. No special, less stringent requirements for alterations (§6).

5) Mercantile

ADAAG:

Counters:

* At least one of each type of sales or service counter where a cash register is located must be accessible. Accessible counters must be dispersed throughout the facility. Auxiliary counters are permissible in alterations (§7.2(1)).

* At counters without cash registers, such as bank teller windows and ticketing counters, three alternatives are possible: (1) a portion of the counter may be lowered, (2) an auxiliary counter may be provided, or (3) equivalent facilitation may be provided by installing a folding shelf on the front of a counter to provide a work surface for a person using a wheelchair (§7.2(2)).

Check-out aisles:
* At least one of each design of check-out aisle must be accessible, and, in many cases, additional check-out aisles are required to be accessible (i.e., from 20 to 40 percent) depending on the number of check-out aisles and the size of the facility. There are less stringent standards for alterations (§7.3).

UFAS:

Much less detail. At service counters, must provide an accessible portion of the counter or a nearby accessible counter. At least one check-out aisle must be accessible (§7).

6) Jails and prisons

ADAAG: No scoping requirements indicating how many cells need to be accessible.

UFAS: Five percent of residential units in jails, prisons, reformatories, and other detention or correctional facilities must be accessible (§4.1.4(9)(c)).

II-6.4000 Leased buildings. Public entities are encouraged, but not required, to lease accessible space. The availability of accessible private commercial space will steadily increase over time as the title III requirements for new construction and alterations take effect. Although a public entity is not required to lease accessible space, once it occupies a facility, it must provide access to all of the programs conducted in that space (see II-5.0000). Thus, the more accessible the space is to begin with, the easier and less costly it will be later on to make programs available to individuals with disabilities and to provide reasonable accommodations for employees who may need them.

II-6.5000 Alterations to historic properties. Alterations to historic properties must comply with the specific provisions governing historic properties in ADAAG or UFAS, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative standards may be used. The decision to use alternative standards for that feature must be made in consultation with the appropriate historic advisory board designated in ADAAG or UFAS, and interested persons should be invited to participate in the decisionmaking process.

*What are "historic properties?" These are properties listed or eligible for listing in the National Register of Historic Places, or properties designated as historic under State or local law.*

*What are the alternative requirements?* The alternative requirements for historic buildings or facilities provide a minimal level of access. For example --

1) An accessible route is only required from one site access point (such as the parking lot).

2) A ramp may be steeper than is ordinarily permitted.

3) The accessible entrance does not need to be the one used by the general public.
4) Only one accessible toilet is required and it may be unisex.

5) Accessible routes are only required on the level of the accessible entrance.

*But what if complying with even these minimal alternative requirements will threaten or destroy the historic significance?* In such a case, which is rare, the public entity need not make the structural changes required by UFAS or ADAAG. But, if structural modifications that comply with UFAS or ADAAG cannot be undertaken, the Department's regulation requires that "program accessibility" be provided.

ILLUSTRATION: A town owns a one-story historic house and decides to make certain alterations in it so that the house can be used as a museum. The town architect concludes that most of the normal standards for alterations can be applied during the renovation process without threatening or destroying historic features. There appears, however, to be a problem if one of the interior doors is widened, because historic decorative features on the door might be destroyed. The town architect consults the standards and determines that the appropriate historic body with jurisdiction over the particular historic home is the State Historic Preservation Officer. The architect then sets up a meeting with that officer, to which the local disability group and the designated title II coordinator are invited. At the meeting the participants agree with the town architect's conclusion that the normal alterations standards cannot be applied to the interior door. They then review the special alternative requirements, which require an accessible route throughout the level of the accessible entrance. The meeting participants determine that application of the alternative minimal requirements is likewise not possible. In this situation, the town is not required to widen the interior door. Instead, the town provides access to the program offered in that room by making available a video presentation of the items within the inaccessible room. The video can be viewed in a nearby accessible room in the museum.

**II-6.6000 Curb ramps.** When streets, roads, or highways are newly built or altered, they must have ramps or sloped areas wherever there are curbs or other barriers to entry from a sidewalk or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas wherever they intersect with streets, roads, or highways. Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance.

**II-7.0000 COMMUNICATIONS**


**II-7.1000 Equally effective communication.** A public entity must ensure that its communications with individuals with disabilities are as effective as communications with others. This obligation, however, does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities, or in undue financial and administrative burdens.

In order to provide equal access, a public accommodation is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication.
What are auxiliary aids and services? Auxiliary aids and services include a wide range of services and devices that promote effective communication.

Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD’s), videotext displays, and exchange of written notes.

Examples for individuals with vision impairments include qualified readers, taped texts, audio recordings, Brailled materials, large print materials, and assistance in locating items.

Examples for individuals with speech impairments include TDD’s, computer terminals, speech synthesizers, and communication boards.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

ILLUSTRATION 1: Some individuals who have difficulty communicating because of a speech impairment can be understood if individuals dealing with them merely listen carefully and take the extra time that is necessary.

ILLUSTRATION 2: For individuals with vision impairments, employees can provide oral directions or read written instructions. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions. Many transactions with public entities, however, involve more complex or extensive communications than can be provided through such simple methods. Sign language or oral interpreters, for example, may be required when the information being communicated in a transaction with a deaf individual is complex, or is exchanged for a lengthy period of time. Factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.

ILLUSTRATION 3: A municipal hospital emergency room must be able to communicate with patients about symptoms and patients must be able to understand information provided about their conditions and treatment. In this situation, an interpreter is likely to be necessary for communications with individuals who are deaf.

ILLUSTRATION 4: Because of the importance of effective communication in State and local court proceedings, special attention must be given to the communications needs of individuals with disabilities involved in such proceedings. Qualified interpreters will usually be necessary to ensure effective communication with parties, jurors, and witnesses who have hearing impairments and use sign language. For individuals with hearing impairments who do not use sign language, other types of auxiliary aids or services, such as assistive listening devices or computer-assisted transcription services, which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays, may be required.
ILLUSTRATION 5: A municipal police department encounters many situations where effective communication with members of the public who are deaf or hard of hearing is critical. Such situations include interviewing suspects prior to arrest (when an officer is attempting to establish probable cause); interrogating arrestees; and interviewing victims or critical witnesses. In these situations, appropriate qualified interpreters must be provided when necessary to ensure effective communication.

The obligation of public entities to provide necessary auxiliary aids and services is not limited to individuals with a direct interest in the proceedings or outcome. Courtroom spectators with disabilities are also participants in the court program and are entitled to such aids or services as will afford them an equal opportunity to follow the court proceedings.

ILLUSTRATION 6: B, an individual who is hard of hearing, wishes to observe proceedings in the county courthouse. Even though the county believes that B has no personal or direct involvement in the courtroom proceedings at issue, the county must provide effective communication, which in this case may involve the provision of an assistive listening device, unless it can demonstrate that undue financial and administrative burdens would result.

ILLUSTRATION 7: S, who is blind, wants to use the laundry facilities in his State university dormitory. Displayed on the laundry machine controls are written instructions for operating the machines. The university could make the machines accessible to S by Brailling the instructions onto adhesive labels and placing the labels (or a Brailled template) on the machines. An alternative method of ensuring effective communication with S would be to arrange for a laundry room attendant to read the instructions printed on the machines to S. Any one particular method is not required, so long as effective communication is provided.

Must public service announcements or other television programming produced by public entities be captioned? Audio portions of television and videotape programming produced by public entities are subject to the requirement to provide equally effective communication for individuals with hearing impairments. Closed captioning of such programs is sufficient to meet this requirement.

Must tax bills from public entities be available in Braille and/or large print? What about other documents? Tax bills and other written communications provided by public entities are subject to the requirement for effective communication. Thus, where a public entity provides information in written form, it must, when requested, make that information available to individuals with vision impairments in a form that is usable by them. "Large print" versions of written documents may be produced on a copier with enlargement capacities. Brailled versions of documents produced by computers may be produced with a Braille printer, or audio tapes may be provided for individuals who are unable to read large print or do not use Braille. Brailled documents are not required if effective communication is provided by other means.

II-7.1100 **Primary consideration.** When an auxiliary aid or service is required, the public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must give primary consideration to the choice expressed by the individual. "Primary consideration" means that the public entity must honor the choice, unless it can demonstrate that another equally effective means of communication is available, or that use of the means chosen would result in a
fundamental alteration in the service, program, or activity or in undue financial and administrative burdens.

ILLUSTRATION: A county's Supervisor of Elections provides magnifying lenses and readers for individuals with vision impairments seeking to vote. The election procedures specify that an individual who requests assistance will be aided by two poll workers, or by one person selected by the voter. C, a voter who is blind, protests that this method does not allow a blind voter to cast a secret ballot, and requests that the County provide him with a Brailled ballot. A Brailled ballot, however, would have to be counted separately and would be readily identifiable, and thus would not resolve the problem of ballot secrecy. Because County X can demonstrate that its current system of providing assistance is an effective means of affording an individual with a disability an equal opportunity to vote, the County need not provide ballots in Braille.

It is important to consult with the individual to determine the most appropriate auxiliary aid or service, because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective. Some individuals who were deaf at birth or who lost their hearing before acquiring language, for example, use sign language as their primary form of communication and may be uncomfortable or not proficient with written English, making use of a notepad an ineffective means of communication.

Individuals who lose their hearing later in life, on the other hand, may not be familiar with sign language and can communicate effectively through writing. For these individuals, use of a word processor with a videotext display may provide effective communication in transactions that are long or complex, and computer-assisted simultaneous transcription may be necessary in courtroom proceedings. Individuals with less severe hearing impairments are often able to communicate most effectively with voice amplification provided by an assistive listening device.

For individuals with vision impairments, appropriate auxiliary aids include readers, audio recordings, Brailled materials, and large print materials. Brailled materials, however, are ineffective for many individuals with vision impairments who do not read Braille, just as large print materials would be ineffective for individuals with severely impaired vision who rely on Braille or on audio communications. Thus, the requirement for consultation and primary consideration to the individual's expressed choice applies to information provided in visual formats as well as to aurally communicated information.

II-7.1200 Qualified interpreter. There are a number of sign language systems in use by individuals who use sign language. (The most common systems of sign language are American Sign Language and signed English.) Individuals who use a particular system may not communicate effectively through an interpreter who uses a different system. When an interpreter is required, therefore, the public entity should provide a qualified interpreter, that is, an interpreter who is able to sign to the individual who is deaf what is being said by the hearing person and who can voice to the hearing person what is being signed by the individual who is deaf. This communication must be conveyed effectively, accurately, and impartially, through the use of any necessary specialized vocabulary.

May friends or relatives be asked to interpret? Often, friends or relatives of the individual can provide interpreting services, but the public entity may not require the individual to provide his or her own interpreter, because it is the responsibility of the public entity to provide a qualified interpreter. Also, in
many situations, requiring a friend or family member to interpret may not be appropriate, because his or her presence at the transaction may violate the individual's right to confidentiality, or because the friend or family member may have an interest in the transaction that is different from that of the individual involved. The obligation to provide "impartial" interpreting services requires that, upon request, the public entity provide an interpreter who does not have a personal relationship to the individual with a disability.

Are certified interpreters considered to be more qualified than interpreters without certification? Certification is not required in order for an interpreter to be considered to have the skills necessary to facilitate communication. Regardless of the professionalism or skills that a certified interpreter may possess, that particular individual may not feel comfortable or possess the proper vocabulary necessary for interpreting for a computer class, for example. Another equally skilled, but noncertified interpreter might have the necessary vocabulary, thus making the noncertified person the qualified interpreter for that particular situation.

Can a public entity use a staff member who signs "pretty well" as an interpreter for meetings with individuals who use sign language to communicate? Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.

II-7.2000 Telephone communications. Public entities that communicate by telephone must provide equally effective communication to individuals with disabilities, including hearing and speech impairments. If telephone relay services, such as those required by title IV of the ADA, are available, these services generally may be used to meet this requirement. Relay services involve a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user. Where such services are available, public employees must be instructed to accept and handle relayed calls in the normal course of business.

II-7.3000 Emergency telephone services

II-7.3100 General. Many public entities provide telephone emergency services by which individuals can seek immediate assistance from police, fire, ambulance, and other emergency services. These telephone emergency services--including "911" services--are clearly an important public service whose reliability can be a matter of life or death. Public entities must ensure that these services, including 911 services, are accessible to persons with impaired hearing and speech. State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access. (However, if an individual places a call to the emergency service through a relay service, the emergency service should accept the call rather than require the caller to hang up and call the emergency service directly without using the relay.) A public entity may, however, operate its own relay service within its emergency system, provided that the services for nonvoice calls are as effective as those provided for voice calls.
What emergency telephone services are covered by title II? The term "telephone emergency services" applies to basic emergency services -- police, fire, and ambulance -- that are provided by public entities, including 911 (or, in some cases, seven-digit) systems. Direct access must be provided to all services included in the system, including services such as emergency poison control information. Emergency services that are not provided by public entities are not subject to the requirement for "direct access."

What is "direct access?" "Direct access" means that emergency telephone services can directly receive calls from TDD's and computer modem users without relying on outside relay services or third party services.

Does title II require that telephone emergency service systems be compatible with all formats used for nonvoice communications? No. At present, telephone emergency services must only be compatible with the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency environment, a public entity would not be required to provide direct access to computer modems using formats other than Baudot.

Are any additional dialing or space bar requirements permissible for 911 systems? No. Additional dialing or space bar requirements are not permitted. Operators should be trained to recognize incoming TDD signals and respond appropriately. In addition, they also must be trained to recognize that "silent" calls may be TDD or computer modem calls and to respond appropriately to such calls as well.

A caller, however, is not prohibited from announcing to the answerer that the call is being made on a TDD by pressing the space bar or keys. A caller may transmit tones if he or she chooses to do so. However, a public entity may not require such a transmission.

II-7.3200 911 lines. Where a 911 telephone line is available, a separate seven-digit telephone line must not be substituted as the sole means for nonvoice users to access 911 services. A public entity may, however, provide a separate seven-digit line for use exclusively by nonvoice calls in addition to providing direct access for such calls to the 911 line. Where such a separate line is provided, callers using TDD's or computer modems would have the option of calling either 911 or the seven-digit number.

II-7.3300 Seven-digit lines. Where a 911 line is not available and the public entity provides emergency services through a seven-digit number, it may provide two separate lines -- one for voice calls, and another for nonvoice calls -- rather than providing direct access for nonvoice calls to the line used for voice calls, provided that the services for nonvoice calls are as effective as those offered for voice calls in terms of time response and availability in hours. Also, the public entity must ensure that the nonvoice number is publicized as effectively as the voice number, and is displayed as prominently as the voice number wherever the emergency numbers are listed.

ILLUSTRATION: Some States may operate a statewide 911 system for both voice and nonvoice calls and, in addition, permit voice callers only to dial seven-digit numbers to obtain assistance from particular emergency service providers. Such an arrangement does not violate title II so long as nonvoice callers whose calls are directed through 911 receive emergency attention as quickly as voice callers who dial local emergency seven-digit numbers for assistance.
II-7.3400 Voice amplification. Public entities are encouraged, but not required, to provide voice amplification for the operator's voice. In an emergency, a person who has a hearing loss may be using a telephone that does not have an amplification device. Installation of speech amplification devices on the handsets of operators would be one way to respond to this situation.

II-8.0000 ADMINISTRATIVE REQUIREMENTS

Regulatory references: 28 CFR 35.105-35.107; 35.150(c) and (d).

II-8.1000 General. Title II requires that public entities take several steps designed to achieve compliance. These include the preparation of a self-evaluation. In addition, public entities with 50 or more employees are required to --

1) Develop a grievance procedure;

2) Designate an individual to oversee title II compliance;

3) Develop a transition plan if structural changes are necessary for achieving program accessibility; and

4) Retain the self-evaluation for three years.

How does a public entity determine whether it has "50 or more employees"? Determining the number of employees will be based on a governmentwide total of employees, rather than by counting the number of employees of a subunit, department, or division of the local government. Part-time employees are included in the determination.

ILLUSTRATION: Town X has 55 employees (including 20 part-time employees). Its police department has 10 employees, and its fire department has eight employees. The police and fire department are subject to title II's administrative requirements applicable to public entities with 50 or more employees because Town X, as a whole, has 50 or more employees.

Because all States have at least 50 employees, all State departments, agencies, and other divisional units are subject to title II's administrative requirements applicable to public entities with 50 or more employees.

II-8.2000 Self-evaluation. All public entities subject to title II of the ADA must complete a self-evaluation by January 26, 1993 (one year from the effective date of the Department's regulation).

Does the fact that a public entity has not completed its self-evaluation until January 26, 1993, excuse interim compliance? No. A public entity is required to comply with the requirements of title II on January 26, 1992, whether or not it has completed its self-evaluation.

Which public entities must retain a copy of the self-evaluation? A public entity that employs 50 or more employees must retain its self-evaluation for three years. Other public entities are not required to retain
their self-evaluations but are encouraged to do so because these documents evidence a public entity's good faith efforts to comply with title II's requirements.

What if a public entity already did a self-evaluation as part of its obligations under section 504 of the Rehabilitation Act of 1973? The title II self-evaluation requirement applies only to those policies and practices that previously had not been included in a self-evaluation required by section 504. Because most section 504 self-evaluations were done many years ago, however, the Department expects that many public entities will re-examine all their policies and practices. Programs and functions may have changed significantly since the section 504 self-evaluation was completed. Actions that were taken to comply with section 504 may not have been implemented fully or may no longer be effective. In addition, section 504's coverage has been changed by statutory amendment, particularly the Civil Rights Restoration Act of 1987, which expanded the definition of a covered "program or activity." Therefore, public entities should ensure that all programs, activities, and services are examined fully, except where there is evidence that all policies were previously scrutinized under section 504.

What should a self-evaluation contain? A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with title II's requirements. As part of the self-evaluation, a public entity should:

1) Identify all of the public entity's programs, activities, and services; and

2) Review all the policies and practices that govern the administration of the public entity's programs, activities, and services.

Normally, a public entity's policies and practices are reflected in its laws, ordinances, regulations, administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded and may be based on local custom.

Once a public entity has identified its policies and practices, it should analyze whether these policies and practices adversely affect the full participation of individuals with disabilities in its programs, activities, and services. In this regard, a public entity should be mindful that although its policies and practices may appear harmless, they may result in denying individuals with disabilities the full participation of its programs, activities, or services. Areas that need careful examination include the following:

1) A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan (see II-8.3000).

2) A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program, service, or activity. The self-evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.
3) A public entity should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others. If a public entity communicates with applicants and beneficiaries by telephone, it should ensure that TDD's or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech. Finally, if a public entity provides telephone emergency services, it should review its policies to ensure direct access to individuals who use TDD's and computer modems.

4) A public entity should review its policies to ensure that they include provisions for readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals with hearing impairments; and amanuenses for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where these services will be provided. Where equipment is used as part of a public entity's program, activity, or service, an assessment should be made to ensure that the equipment is usable by individuals with disabilities, particularly individuals with hearing, visual, and manual impairments. In addition, a public entity should have policies that ensure that its equipment is maintained in operable working order.

5) A review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.

6) A review should be conducted of a public entity's written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.

7) If a public entity operates historic preservation programs, it should review its policies to ensure that it gives priority to methods that provide physical access to individuals with disabilities.

8) A public entity should review its policies to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by title II, are made properly and expeditiously.

9) A public entity should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings.

10) A public entity should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including section 504 of the Rehabilitation Act and the ADA regulation issued by the Equal Employment Opportunity Commission.

11) A public entity should review its building and construction policies to ensure that the construction of each new facility or part of a facility, or the alteration of existing facilities after January 26, 1992, conforms to the standards designated under the title II regulation.

12) A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.
13) If a public entity limits or denies participation in its programs, activities, or services based on drug usage, it should make sure that such policies do not discriminate against former drug users, as opposed to individuals who are currently engaged in illegal use of drugs.

If a public entity identifies policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, when should it make changes? Once a public entity has identified policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, it should take immediate remedial action to eliminate the impediments to full and equivalent participation. Structural modifications that are required for program accessibility should be made as expeditiously as possible but no later than January 26, 1995.

Is there a requirement for public hearings on a public entity's self-evaluation? No, but public entities are required to accept comments from the public on the self-evaluation and are strongly encouraged to consult with individuals with disabilities and organizations that represent them to assist in the self-evaluation process. Many individuals with disabilities have unique perspectives on a public entity's programs, activities, and services. For example, individuals with mobility impairments can readily identify barriers preventing their full enjoyment of the public entity's programs, activities, and services. Similarly, individuals with hearing impairments can identify the communication barriers that hamper participation in a public entity's programs, activities, and services.

II-8.3000 Transition plan. Where structural modifications are required to achieve program accessibility, a public entity with 50 or more employees must do a transition plan by July 26, 1992, that provides for the removal of these barriers. Any structural modifications must be completed as expeditiously as possible, but, in any event, by January 26, 1995.

What if a public entity has already done a transition plan under section 504 of the Rehabilitation Act of 1973? If a public entity previously completed a section 504 transition plan, then, at a minimum, a title II transition plan must cover those barriers to accessibility that were not addressed by its prior transition plan. Although not required, it may be simpler to include all of a public entity's operations in its transition plan rather than identifying and excluding those barriers that were addressed in its previous plan.

Must the transition plan be made available to the public? If a public entity has 50 or more employees, a copy of the transition plan must be made available for public inspection.

What are the elements of an acceptable transition plan? A transition plan should contain at a minimum --

1) A list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities;

2) A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible;

3) The schedule for taking the necessary steps to achieve compliance with title II. If the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period; and,
4) The name of the official responsible for the plan's implementation.

II-8.4000 Notice to the public. A public entity must provide information on title II's requirements to applicants, participants, beneficiaries, and other interested persons. The notice shall explain title II's applicability to the public entity's services, programs, or activities. A public entity shall provide such information as the head of the public entity determines to be necessary to apprise individuals of title II's prohibitions against discrimination.

What methods can be used to provide this information? Methods include the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. In providing the notice, a public entity must comply with the title II requirements for effective communication, including alternate formats, as appropriate.

II-8.5000 Designation of responsible employee and development of grievance procedures. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and fulfill its responsibilities under title II, including the investigation of complaints. A public entity shall make available the name, office address, and telephone number of any designated employee.

In addition, the public entity must adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by title II.

II-9.0000 INVESTIGATION OF COMPLAINTS AND ENFORCEMENT


II-9.1000 General. Individuals wishing to file title II complaints may either file --

1) An administrative complaint with an appropriate Federal agency; or

2) A lawsuit in Federal district court.

If an individual files an administrative complaint, an appropriate Federal agency will investigate the allegations of discrimination. Should the agency conclude that the public entity violated title II, it will attempt to negotiate a settlement with the public entity to remedy the violations. If settlement efforts fail, the matter will be referred to the Department of Justice for a decision whether to institute litigation.

How does title II relate to section 504? Many public entities are subject to section 504 of the Rehabilitation Act as well as title II. Section 504 covers those public entities operating programs or activities that receive Federal financial assistance. Title II does not displace any existing section 504 jurisdiction.
The substantive standards adopted for title II are generally the same as those required under section 504 for federally assisted programs. In those situations where title II provides greater protection of the rights of individuals with disabilities, however, the funding agencies will also apply the substantive requirements established under title II in processing complaints covered by both title II and section 504.

Individuals may continue to file discrimination complaints against recipients of Federal financial assistance with the agencies that provide that assistance, and the funding agencies will continue to process those complaints under their existing procedures for enforcing section 504. The funding agencies will be enforcing both title II and section 504, however, for recipients that are also public entities.

II-9.2000 Complaints. A person or a specific class of individuals or their representative may file a complaint alleging discrimination on the basis of disability.

What must be included in a complaint? First, a complaint must be in writing. Second, it should contain the name and address of the individual or the representative filing the complaint. Third, the complaint should describe the public entity's alleged discriminatory action in sufficient detail to inform the Federal agency of the nature and date of the alleged violation. Fourth, the complaint must be signed by the complainant or by someone authorized to do so on his or her behalf. Finally, complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Is there a time period in which a complaint must be filed? Yes. A complaint must be filed within 180 days of the date of the alleged act(s) of discrimination, unless the time for filing is extended by the Federal agency for good cause. As long as the complaint is filed with any Federal agency, the 180-day requirement will be considered satisfied.

Where should a complaint be filed? A complaint may be filed with either --

1) Any Federal agency that provides funding to the public entity that is the subject of the complaint;

2) A Federal agency designated in the title II regulation to investigate title II complaints; or

3) The Department of Justice.

Complainants may file with a Federal funding agency that has section 504 jurisdiction, if known. If no Federal funding agency is known, then complainants should file with the appropriate designated agency. In any event, complaints may always be filed with the Department of Justice, which will refer the complaint to the appropriate agency. The Department's regulation designates eight Federal agencies to investigate title II complaints primarily in those cases where there is no Federal agency with section 504 jurisdiction.

How will employment complaints be handled? Individuals who believe that they have been discriminated against in employment by a State or local government in violation of title II may file a complaint --

1) With a Federal agency that provides financial assistance, if any, to the State or local program in which the alleged discrimination took place; or
2) With the EEOC, if the State or local government is also subject to title I of the ADA (see II-4.0000); or

3) With the Federal agency designated in the title II regulation to investigate complaints in the type of program in which the alleged discrimination took place.

As is the case with complaints related to nonemployment issues, employment complaints may be filed with the Department of Justice, which will refer the complaint to the appropriate agency.

*Which are the designated Federal agencies and what are their areas of responsibility?* The eight designated Federal agencies, the functional areas covered by these agencies, and the addresses for filing a complaint are the --

1) Department of Agriculture: All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services. Complaints should be sent to: Complaints Adjudication Division, Office of Advocacy and Enterprise, Room 1353 - South Building, Department of Agriculture, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

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. Complaints should be sent to: Office for Civil Rights, Department of Education, 330 C Street, S.W., Suite 5000, Washington, D.C. 20202.

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 day care programs. Complaints should be sent to: Office for Civil Rights, Department of Health & Human Services, 330 Independence Avenue, S.W., Washington, D.C. 20201.

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. Complaints should be sent to: Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, S.W., Room 5100, Washington, D.C. 20410.

5) Department of the 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. Complaints should be sent to: Office for Equal Opportunity, Office of the Secretary, Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20547.

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. Complaints should be sent to: Coordination and Review Section, P.O. Box 66118, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20035-6118.

7) Department of Labor: All programs, services, and regulatory activities relating to labor and the workforce. Complaints should be sent to: Directorate of Civil Rights, Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, D.C. 20210.

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. Complaints should be sent to: Office for Civil Rights, Office of the Secretary, Department of Transportation, 400 Seventh Street, S.W., Room 10215, Washington, D.C. 20590.

Where should a complaint be filed if more than one designated agency has responsibility for a complaint because it concerns more than one department or agency of a public entity? Complaints involving more than one area should be filed with the Department of Justice. If two or more agencies have apparent responsibility for a complaint, the Assistant Attorney General for Civil Rights of the Department of Justice shall determine which one of the agencies shall be the designated agency for purposes of that complaint. Complaints involving more than one area of a public entity should be sent to: Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118.

How will complaints be resolved? The Federal agency processing the complaint will resolve the complaint through informal means or issue a detailed letter containing findings of fact and conclusions of law and, where appropriate, a description of the actions necessary to remedy each violation. Where voluntary compliance cannot be achieved, the complaint may be referred to the Department of Justice for enforcement. In cases where there is Federal funding, fund termination is also an enforcement option.

If a public entity has a grievance procedure, must an individual use that procedure before filing a complaint with a Federal agency or a court? No. Exhaustion of a public entity's grievance procedure is not a prerequisite to filing a complaint with either a Federal agency or a court.

Must the complainant file a complaint with a Federal agency prior to filing an action in court? No. The ADA does not require complainants to exhaust administrative remedies prior to instituting litigation.

Are attorney's fees available? Yes. The prevailing party (other than the United States) in any action or administrative proceeding under the Act may recover attorney's fees in addition to any other relief granted. The "prevailing party" is the party that is successful and may be either the complainant (plaintiff) or the covered entity against which the action is brought (defendant). The defendant, however, may not recover attorney's fees unless the court finds that the plaintiff's action was frivolous, unreasonable, or without foundation, although it does not have to find that the action was brought in subjective bad faith. Attorney's fees include litigation expenses, such as expert witness fees, travel expenses, and costs. The United States is liable for attorney's fees in the same manner as any other party, but is not entitled to them when it is the prevailing party.
Is a State immune from suit under the ADA? No. A State is not immune from an action in Federal court for violations of the ADA.

Is a private plaintiff entitled to compensatory damages? A private plaintiff under title II is entitled to all of the remedies available under section 504 of the Rehabilitation Act of 1973, including compensatory damages.

ILLUSTRATION: A county court system is found by a Federal court to have violated title II of the ADA by excluding a blind individual from a jury because of his blindness. The individual is entitled to compensatory damages for any injuries suffered, including compensation, when appropriate, for any emotional distress caused by the discrimination.
Title II of the Americans with Disabilities Act
Section 504 of the Rehabilitation Act of 1973
Discrimination Complaint Form

Instructions: Please fill out this form completely, in black ink or type. Sign and return to the
address on page 3.

Complainant:

Address:

City, State and Zip Code:

Telephone: Home:
Business:

Person Discriminated Against:
(if other than the complainant)

Address:

City, State, and Zip Code:

Telephone: Home:
Business:

Government, or organization, or institution which you believe has discriminated:

Name:

Address:

County:

City:
State and Zip Code:

Telephone Number:

When did the discrimination occur? Date:

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (use space on page 3 if necessary):

Have efforts been made to resolve this complaint through the internal grievance procedure of the government, organization, or institution?

Yes______ No______

If yes: what is the status of the grievance?

Has the complaint been filed with another bureau of the Department of Justice or any other Federal, State, or local civil rights agency or court?

Yes______ No______

If yes: Agency or Court:

Contact Person:

Address:

City, State, and Zip Code:

Telephone Number:

Date Filed:

Do you intend to file with another agency or court?

Yes______ No______

Agency or Court:

Address:
City, State and Zip Code:

Telephone Number:

Additional space for answers:

Signature: ________________________________

Date: _________________________________

Return to:
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Disability Rights - NYAV
Washington, D.C. 20530

Paperwork Reduction Act Statement:
A federal agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Public burden for the collection of this information is estimated to average 45 minutes per response. Comments regarding this collection of information should be directed to the Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Office of the Chief Information Officer, Policy and Planning Staff, Two Constitution Square, 145 North Street, N.E., Room 2E–508, Washington, D.C. 20530.
OMB No. 1190-0009. Expiration Date: May 31, 2015.
Section 4

ADA SERVICES AND OTHER RELATED INFORMATION
I. Introduction

Dialing 9-1-1 is the most familiar and effective way Americans have of finding help in an emergency. The Americans with Disabilities Act (ADA) requires all Public Safety Answering Points (PSAPs) to provide direct, equal access to their services for people with disabilities who use teletypewriters (TTYs), which are also known as "telecommunications devices for the deaf (TDDs)."

This document is part of a technical assistance program to provide State and local governments and persons with disabilities with information about the requirements of the ADA for direct, equal access to

9-1-1 for persons with disabilities who use TTYs. This guidance is an updated version of the Department of Justice's earlier guidance entitled, "Commonly Asked Questions Regarding Telephone Emergency Services." It explains in practical terms how the ADA's requirements apply to 9-1-1 services, including equipment, standard operating procedures, and training, and should be useful to 9-1-1 service providers, equipment vendors, participating telephone companies, and individuals with disabilities.

Different emergency providers may have different capabilities and features. For instance, some larger providers have "Enhanced 9-1-1" or "E9-1-1," which automatically identifies for 9-1-1 call takers the telephone number and/or address of callers. Some providers have call distribution systems, which place incoming calls in a queue and distribute them to the next available call taker. Other, smaller providers, may not have these capabilities. This guidance can be useful to all types of telephone emergency providers, both small and large.
A. ADA Coverage of Telephone Emergency Services

Title II of the ADA covers telephone emergency service providers and other State and local government entities and instrumentalities. The Department's regulation is published at 28 C.F.R. Part 35. To obtain a copy of the ADA or its implementing regulations, or if you have questions about the ADA, contact the Department of Justice ADA Information Line at (800) 514-0301 (voice), or (800) 514-0383 (TTY), or access the Department's ADA Home Page at http://www.usdoj.gov/crt/ada/adahom1.htm

Q: What types of telephone emergency services are covered by Title II of the ADA?

A: The phrase "telephone emergency services" applies to basic emergency service -- police, fire, and ambulance -- that are provided by public safety agencies, including 9-1-1 (or, in some cases, seven-digit) systems. Direct, equal access must be provided to all services included in the system, including services such as emergency poison control information.

Q: In areas without 9-1-1 services, are PSAPs still required to provide access for TTY users to the telephone emergency services?

A: Yes. Where 9-1-1 is not available and a PSAP provides emergency services via a seven-digit number, it still must provide direct, equal access to TTY callers. It may do so either by having one line for both voice and TTY calls, or it may provide two separate lines -- one for voice calls, and another for TTY calls. Requiring TTY callers to call a separate seven-digit number is not allowed in areas where 9-1-1 is offered, because having to dial a seven-digit number is not equal to the ease of having to dial the simple, familiar 9-1-1.

As with 9-1-1, services for TTY calls on seven-digit numbers must be as effective as those offered for voice calls in terms of time of response, hours of operation, and other features. Also, PSAPs must ensure that TTY numbers are publicized as effectively as voice numbers and displayed as prominently as voice numbers wherever telephone emergency numbers are listed.

Separate Telephone Lines for TTY Users

Q: Can a PSAP dedicate a separate seven-digit line for TTY calls?

A: Yes, but TTY users must also have direct, equal access to all call-taking positions on 9-1-1 lines. A PSAP cannot require TTY users to call a seven-digit number when voice callers may dial the more familiar 9-1-1.

B. TTYs & Telephone Relay Services
A TTY is a device that is used in conjunction with a telephone to communicate with persons who are deaf, who are hard of hearing, or who have speech impairments, by typing and reading text. To communicate by TTY, a person types his or her conversation, which is read on a TTY display by the person who receives the call. Both parties must have TTYs to communicate. When typing on a TTY, each letter is transmitted by an electronic code called Baudot, which is sent from the TTY on the sending end of the call through the telephone line in the form of tones to the TTY on the receiving end of the call, the same way voiced communications occur between two parties. The receiving TTY transforms the tones back to letters on a small display screen.

Communication between two persons using standard TTYs can only occur in one direction at a time. Thus, both persons who are conversing cannot type to each other at the same time; they must take turns sending and receiving. A person sending a communication by TTY indicates that he or she has finished transmitting by typing the letters "GA," which stand for "go ahead."

A person can also use a computer with a TTY modem and related software to communicate with someone who has a TTY or who has a computer with TTY software and a modem. Computers generally operate in American Standard Code for Information Interchange (ASCII), an electronic "language." A person who uses ASCII must use an ASCII/Baudot modem and related software to convert the ASCII code into Baudot code, in order to communicate with another person who is using a Baudot-based system. Similarly, a person who is using a Baudot-based TTY must utilize conversion software to communicate with a person using an ASCII-based computer.

Telephone relay services are provided by States, as required by Title IV of the ADA, and are regulated by the Federal Communications Commission. Relay services involve a communications assistant who uses both a standard telephone and a TTY to type voice communication to a TTY user and read a TTY user's typed communication to a voice telephone user. Telephone relay services are not as effective for emergencies, because they are far more time-consuming than calls between two TTYs.

Q: Does Title II require that telephone emergency service systems be compatible with all codes used for TTY communications?

A: No. At present, telephone emergency services must only be compatible with the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency environment, a State or local government agency is not required to provide direct access to computer modems using formats other than Baudot.

Q: Can PSAPs rely on State relay services to answer emergency calls from persons who are deaf, hard of hearing, or who have speech impairments?

A: No. The Title II regulation specifically prohibits emergency telephone service providers from relying on relay services. Relay services do not provide "direct access," because they require the services of a third party and are far more time-consuming than direct TTY calls. However, if a
person placing a call to a PSAP voluntarily chooses to rely on a telephone relay service, the PSAP must answer and respond appropriately to such a call.

II. Direct, Equal TTY Access

A. General Requirements for Telephone Emergency Service Providers

The ADA regulation requires 9-1-1 or other telephone emergency service providers to provide TTY users with:

- direct access; and
- an opportunity to benefit from the emergency services that is equal to the opportunity afforded others.

Direct access means that PSAPs can directly receive TTY calls without relying on an outside relay service or third-party services.

Equal access means that the telephone emergency services provided for TTY users are as effective as those provided for persons who make voice calls, in terms of:

- response time;
- response quality;
- hours of operation; and
- all other features offered (e.g., automatic number identification, automatic location identification, automatic call distribution).

Direct, equal access requires PSAPs to have the appropriate equipment to communicate with people who use TTYs. It also requires them to use the proper procedures and practices when TTY calls are received.

B. Equipment

Number of TTYs

In order to afford equal access to TTY users, every call-taking position within a PSAP must have its own TTY or TTY-compatible equipment. PSAPs must have systems that enable call takers to handle TTY calls as properly, promptly, and reliably as voice calls. Every call-taking position needs its own TTY equipment because experience has shown that:

- With TTY or TTY-compatible equipment at each call-taking position, call takers can handle TTY calls as effectively as voice calls.
• Call takers at PSAPs that had only one TTY per center had significant difficulties handling TTY calls within their standard answering time.
• Sharing a TTY among several call takers may result in undue delay in obtaining the TTY and connecting it to the answering position.
• Transferring a TTY call from a non-TTY-capable answering position to a TTY-dedicated position may result in the call being disconnected or undue delay in answering the call. In some cases, transfers may result in the loss of enhanced features, such as automatic number identification and automatic location identification information.
• Each call taker needs to query every silent, open line call as a potential TTY call, as described in Section D, below. Because most PSAPs receive many silent, open line calls, often more than one at a time, each call taker must have his or her own TTY equipment to be able to query all of those calls with a TTY.

Thus, PSAPs may not provide TTY equipment at only a limited number of positions, such as, at only a supervisor's position, or at only one dedicated call taker's line. PSAPs must have systems that respond to TTY calls as promptly and reliably as they respond to voice calls. Call takers cannot be required to transfer TTY calls to specific phone lines or locations, unless voice calls are also transferred under the same circumstances. Transfers consume critical time, greatly increase the risk that the call will be disconnected, and may result in the loss of enhanced features, such as automatic number identification and automatic location identification information.

People other than "dedicated" call takers often act as call takers and therefore must have their own TTY equipment. For instance, dispatchers will often take overflow emergency calls when all dedicated call takers are busy, and supervisors may take calls on occasion. Every person who takes emergency calls from the public under any circumstances must have their own TTY equipment for the same reasons that dedicated call takers must have their own TTY equipment.

Q: If a PSAP has only received a few TTY calls per month over the past year, why does it need TTYs at every call-taking position?

A: Most PSAPs receive many silent open line calls, which may be TTY calls. In order for call takers to know if silent calls are TTY calls, each call taker will need TTY equipment to query every silent call with a TTY. It is possible that call takers have been receiving more than a few TTY calls per month, but have treated them as silent lines or hang-ups rather than TTY calls. This is likely if the call takers have not been querying all silent lines with TTYs. Some of those silent lines or hang-ups may have been TTY users waiting for a TTY response.

Historically, many persons who use TTYs have not had confidence in the accessibility of 9-1-1 services and have not attempted to make direct TTY calls to their PSAP. The number of TTY calls each PSAP receives is likely to increase in the future, as PSAPs become more accessible to TTY users, and as TTY users learn of PSAPs' improved accessibility.

Q: If a PSAP complies with a State law, which requires only one TTY per PSAP, is that PSAP also in compliance with the ADA?
A: No. Satisfying State law requirements does not mean that a PSAP is also in compliance with the ADA. Some State laws require only one TTY per PSAP. The ADA, however, requires direct, equal access, which means that PSAPs must have enough TTY equipment so that each call-taking position has its own TTY capability. Also, if a PSAP has extra voice telephone equipment in case of malfunction, which most do, the ADA would also require them to have back-up TTY equipment. Therefore, under the ADA, virtually all PSAPs must have two or more TTYs.

Enhanced Features

Many PSAPs have advanced features that facilitate prompt responses to callers. Many PSAPs have, for example, automatic number identification (ANI) and automatic location identification (ALI), which tell the call taker the phone number and address from which a call originates. PSAPs that have these features must ensure that TTY calls have the same access to enhanced features as do voice telephone calls. TTY calls may not be required to be transferred to a third line, because those transfers often result in the loss of the automatic phone number and address information. Another feature employed by PSAPs is automatic call distribution (ACD), which places incoming calls into a queue, sends out a programmed message to callers to let them know that their calls have been received, and distributes calls to the next available call taker. This feature, if offered, must also be made accessible for TTY calls, with a programmed TTY message.

Relationship Between Primary and Secondary PSAPs

Primary PSAPs (9-1-1 answering points) often transfer calls to secondary PSAPs (such as fire or emergency medical services) if they do not dispatch those services directly from the primary PSAP. In those transfer situations, PSAPs must correctly transfer TTY calls, as they do voice calls. Secondary PSAPs have the same responsibilities under the ADA as do primary PSAPs, and they must be able to receive transferred TTY calls as efficiently and as effectively as voice calls.

C. Other Requirements for TTY Equipment

Maintenance and Back-Up

The ADA regulation contains a specific provision requiring that covered entities maintain their accessibility features and equipment in operable working condition. In addition to this specific maintenance requirement, the ADA's equal access requirement obligates PSAPs to implement equally effective procedures for maintenance and back-up capability for TTY equipment as they provide for voice telephone equipment. For example:
TTY equipment must be maintained and tested at least as often as voice telephone equipment, to ensure that the equipment is operating properly. If PSAPs check their voice telephone equipment every day to make sure it is working, they must do so every day for TTY equipment. Similarly, if PSAPs have contracts with outside companies for maintenance of their voice telephone equipment, they must employ equally effective methods for TTY equipment.

Most PSAPs have plans for using back-up equipment in case some of its equipment or telephone lines malfunction, or in case there is a power failure. If a PSAP has such a plan for voice calls and equipment, it must provide for TTY calls and equipment in that plan. For instance, PSAPs should keep extra TTY equipment on hand, in case the primary equipment fails, if they have back-up voice telephone equipment for such a situation.

Switching Between Voice and TTY Modes

All call takers must have the capability to switch back and forth easily from TTY mode to voice mode during the same call. This capability is necessary especially for silent calls, since call takers are required to first query the line by voice and then quickly switch to query the line by TTY. This capability is also necessary for VCO and HCO, which are described below. VCO and HCO shorten the lengths of calls that would otherwise be conducted exclusively by typing. Call takers who use stand-alone TTYs can switch from TTY mode back to voice mode simply by removing the telephone handset from the TTY couplers. TTY-compatible consoles for call takers should have built-in switching capability.

Q: What is VCO? Who uses it?

A: VCO is voice carryover. It is a communication hybrid of TTY and voice. VCO allows a person with hearing loss to speak directly to the call taker and read the response that is typed back. Many persons who became deaf or hard of hearing later in life prefer to speak instead of type. They use what is called voice carryover (VCO). With VCO, the caller speaks directly into the phone, and the call taker types back via TTY to the caller. VCO can be accomplished with standard stand-alone TTY equipment simply by having the call taker alternate between listening on the handset when the caller is speaking and placing the handset in the TTY couplers to type a response.

Q: What is HCO? Who uses it?

A: HCO is hearing carryover. People with speech impairments who are not deaf or hard of hearing often prefer HCO. HCO allows them to type their words on a TTY to call takers and hear call takers’ spoken responses through their handset. HCO can be accomplished by a call taker using standard stand-alone TTY equipment by alternating speaking into the handset and placing the handset in the TTY when the caller types a response.

D. Procedures for Handling TTY Calls
In addition to proper equipment, direct, equal access for TTY calls requires that PSAPs use effective procedures for recognizing and responding to TTY calls.

**Recognizing TTY Calls/Treating Silent, Open Lines as Potential TTY Calls**

All call takers must be able to recognize and handle TTY calls properly. There are three types of TTY calls a call taker may receive. Some TTYs emit a recorded spoken announcement to the call taker that a TTY call is being placed, such as "HEARING IMPAIRED CALLER. USE TTY." Other times, TTY callers may press TTY keys to emit audible tones and more quickly notify the call taker that a TTY call is being placed. Most often, however, a person using a TTY will make a call that is perceived by the call taker as a silent, open line call. This is because the caller's equipment does not recognize that the call has been answered until the call taker sends a TTY response.

The only way for PSAPs to properly identify all TTY calls is for call takers to recognize TTY tones and to query every silent, open line call with a TTY to determine if it is a TTY call after it has been queried by voice.

**Requiring Callers Using TTYs to Press a Key**

In the past, some PSAPs have required callers using TTYs to press the space bar or other keys after they call, to emit tones and notify call takers that it is a TTY call. This requirement violates the ADA. Requiring TTY callers to press keys repeatedly until recognized is unfamiliar to most TTY callers, and callers cannot be relied on to perform such unfamiliar tasks, especially in emergency situations. Further, in many emergency situations there may not be time or opportunity to press keys repeatedly until recognized.

**ILLUSTRATION:** A 9-1-1 call taker answers a call, responds with a standard spoken greeting, and expects to hear a spoken response. If the call taker receives a silent, open line, the call taker should query the line verbally a second time, and then query the line using a TTY to determine if the call is from a TTY user.

**TTY Detection Equipment**

**Q:** If a PSAP uses TTY detection equipment, does it still have to query every silent call with a TTY?

**A:** Yes. Some PSAPs have installed equipment that detects TTY calls and produces a voice announcement to the call taker that a TTY call has come in. TTY detection equipment, however, only recognizes TTY calls that transmit tones, such as when callers press keys to emit tones. This
equipment will not recognize TTY calls when the caller does not emit tones and instead waits for a TTY response before transmitting. Thus, TTY detection equipment does not eliminate the need for call takers to query every silent line with a TTY.

Dispatching Police to Origin of Silent Calls

It is not sufficient merely to dispatch police to the origins of all silent, open lines, in lieu of querying the lines with a TTY. Precious time may be lost by sending the police if the caller needs another type of response, such as fire or emergency medical services. All silent, open lines must be queried with a TTY to assess the basis for the call and to dispatch the appropriate emergency equipment and personnel.

Conducting TTY Calls

After TTY calls are recognized, call takers must effectively communicate with callers during the calls. Effective communication by TTY will require call takers to be familiar with the use of TTY equipment and TTY protocols.

E. Training

PSAPs must train their call takers to effectively recognize and process TTY calls. Call takers must be trained in the use of TTY equipment and supplied with information about communication protocol with individuals who are deaf or hard of hearing, or who have speech impairments. For instance, callers who use American Sign Language use a syntax that is different from spoken English. In addition, in TTY communication, certain accepted abbreviations are frequently used. A list of some of those abbreviations is attached to this document.

The ADA does not specify how call takers must be trained, but the Department believes that the following are essential to proper training:

Training should be mandatory for all personnel who may have contact with individuals from the public who are deaf, hard of hearing, or who have speech impairments.

PSAPs should require or offer refresher training at least as often as they require or offer training for voice calls, but at a minimum, every six months.

Comprehensive training should include:
Information about the requirements of the ADA and Section 504 of the Rehabilitation Act for telephone emergency service providers;

Information about communication issues regarding individuals who are deaf or hard of hearing, or who have speech impairments, including information about American Sign Language;

Practical instruction on identifying and processing TTY calls, including the importance of recognizing silent TTY calls, using proper syntax, abbreviations, and protocol when responding to TTY calls and relayed calls; and

Hands-on experience in TTY communications, especially for new call takers, as part of their initial training orientation.

To ensure the effectiveness of training, PSAPs may want to consult the Emergency Access Self-Evaluation program, published as a manual by Telecommunications for the Deaf, Inc., under a Department of Justice grant. The EASE manual, which was reviewed by the Department, can be obtained for a fee by calling TDI at (301) 589-3786 (voice), (301) 589-3006 (TTY), or (301) 589-3797 (FAX).

F. Testing

The Department believes that frequent testing is essential to ensure direct, equal access. Testing call takers and their equipment is also the one of the most effective ways to ensure compliance with the ADA's requirement that accessibility features are maintained in operable working condition. The ADA does not specify how testing is to be conducted. We believe, however, that PSAPs should conduct an internal testing program in which they conduct random TTY test calls of each call-taking position. The tests should be designed to ascertain whether TTY equipment functions properly and whether personnel have been adequately trained to recognize TTY calls quickly, to operate TTY equipment, and to conduct TTY conversations. The Department recommends the following for an effective testing program:

To test whether call takers have been trained adequately to recognize TTY calls, a PSAP should conduct two types of test calls--silent, open line calls in which no tones are emitted and calls in which the caller introduces the call by transmitting TTY tones. Tests should be unannounced.

It is best for PSAPs to keep records of the results of all test calls, including, at a minimum: the date and time of each test call; identification of the call taker and call-taking position; whether each call was silent or transmitted tones; whether the caller received a TTY response and the content of the TTY response; the time elapsed and number of rings from the initiation of the TTY call until the call taker responded by TTY; and whether the call was processed according to the PSAP's standard operating procedures. The testing program should cover each call taker and each position.
Some Helpful TTY Abbreviations

ASAP - As soon as possible
CD or CLD - Could
GA - Go ahead, your turn to talk
GA or SK - Go ahead or Goodbye
HCO (Hearing Carry Over) - TTY user will use his/her hearing during call
HD or HLD - Hold, Please
MSG - Message
NBR or NU - Number
PLS - Please
Q or QQ - Question mark
R - Are
SHD - Should
SKSK - Stop Keying, means end of conversation
TMW - Tomorrow
TTY - Teletypewriter
U - You
UR - Your
VCO - (Voice Carry Over) TTY user will use his/her voice during the call
XXXX - Error, Erase

This document is available in the following formats for persons with disabilities --

- Braille
- Large print
• Audiocassette
• Electronic file on computer disk and electronic bulletin board, (202) 514-6193

To obtain these documents in alternate formats, call the Department of Justice ADA Information Line, (800) 514-0301 (voice), (800) 514-0383 (TDD).

Note: Reproduction of this document is encouraged.

July 15, 1998
In 1994, the Department of Justice established the ADA Mediation Program. Initially funded through the ADA Technical Assistance Program, the Mediation Program now operates under a contract with the Key Bridge Foundation.

Many ADA disputes can be resolved successfully through informal methods. In enacting the ADA, Congress specifically encouraged the use of alternative means of dispute resolution, including mediation, to resolve ADA disputes.

**What is mediation?**

Mediation is an informal process where an impartial third party helps disputing parties to find mutually satisfactory solutions to their differences. Mediation can resolve disputes quickly and satisfactorily, without the expense and delay of formal investigation and litigation.

Mediation proceedings are confidential and voluntary for all parties. Mediation typically involves one or more meetings between the disputing parties and the mediator. It may also involve one or more confidential sessions between individual parties and the mediator.

Mediation is neither therapy nor a "day in court." Rather, mediation should provide a safe environment for the parties to air their differences and reach a mutually agreeable resolution. Mediators are NOT judges. Their role is to manage the process through which parties resolve their conflict, not to decide how the conflict should be resolved. They do this by assuring the fairness of the mediation process, facilitating communication, and maintaining the balance of power between the parties.

Representation by an attorney is permitted, but not required, in mediation. While mediators may not give legal advice or interpret the law, they will refer parties to impartial outside experts within the disability and legal communities when questions or issues needing clarification arise.

A successful mediation results in a binding agreement between the parties. If mediation is unsuccessful and an agreement...
can not be reached, parties may still pursue all legal remedies provided under the ADA, including private lawsuits.

Complaints under both title II (public entities) and title III (private entities) can be mediated. Disputes involving barrier removal or program accessibility, modification of policies, and effective communication are most appropriate for mediation.

Through its program, the Department refers appropriate ADA disputes to mediators at no cost to the parties. The mediators in the Department of Justice program are professional mediators who have been trained in the legal requirements of the ADA by the Key Bridge Foundation. The Department's program has already resolved many ADA disputes quickly and effectively. Examples of some successful resolutions are described below. Additional examples of successfully resolved disputes are described in the Department's quarterly ADA Status Reports.

If you want to work with a mediator and the other party to resolve an ADA dispute through the Department's program, you must simply follow the usual procedure for filing a complaint (title II, title III) with the Department and note on the complaint that you want to take your dispute to mediation. While we cannot guarantee that everyone who wants mediation will be able to participate in the program, the Department will make every effort to comply with requests for mediation.

Selected Mediation Case Summaries

Barrier Removal

1. A Michigan bowling center agreed to install a platform and ramp to one of its bowling lanes within one month. The center also renovated its entire second floor to make it accessible and added accessible parking spaces.

2. An Ohio shopping mall and movie theater agreed to make renovations to provide accessible restrooms, parking, and movie theaters within three months. Three of the five movie theaters will be made accessible and movies will be rotated between theaters so all movies will be shown in the accessible theaters. In addition, the theater will provide accessibility symbols in its advertisements to show which movies are in the accessible theaters.

3. An Ohio hotel agreed to remodel its lobby restrooms to be accessible to persons with disabilities, increase the number of accessible parking spaces near the hotel pool, research the cost of installing accessible restrooms by the pool, and train personnel about how better to respond to the needs of persons with disabilities. The hotel also apologized to the complainant and her family and provided a free weekend package for them at the hotel.

4. A restaurant in Texas agreed to provide directional signage at an inaccessible restroom to indicate the location of the accessible restroom, write a letter of apology, and provide $2,000 in compensation to the complainant.

5. A country club in Florida will remodel its facilities to provide accessible restrooms, train personnel about the ADA, and pay the complainants $1000.

6. A Missouri college agreed to develop a plan to provide access to a historical building, including installation of a ramp. Until these changes are implemented, the college agreed to provide assistance for individuals in entering the building and to make a video describing the historical information about the building available for individuals who prefer that format. The college also agreed to install a ramp to provide access to the bleachers in its sports facility, to provide van accessible parking spaces with appropriate signage, and to train personnel to assist individuals with disabilities.

7. A wheelchair user complained that an Ohio restaurant did not have an accessible smoking section. The restaurant manager
agreed to create another smoking section that is accessible to people with disabilities and to instruct the staff about this new section. The manager agreed to consult with the complainant about making the bar accessible. The manager also agreed to make the modifications necessary for a van accessible parking space.

8. In Virginia, a wheelchair user complained that a condominium sales office did not have an accessible entrance. The condominium builder agreed to renovate the sales office entrance to make it accessible. The builder agreed to display a sign stating the policies they have created to comply with the ADA. The policies include providing auxiliary aids and services upon request as needed to ensure effective communication, making informational videos available upon request, and providing a method of requesting any other accommodation that a person with a disability may require. The builder agreed to donate $2,500 to a disability rights organization and to pay the complainant $1,000.

9. In Pennsylvania, a person with a mobility impairment complained that a professional building did not have an accessible entrance or accessible parking. The building owner agreed to install a ramp and build a walkway at the front entrance to make it accessible for people with disabilities and to create an accessible parking space near the ramp. The owner also agreed that the complainant, who cannot stand for long periods of time, could call the manager or one of the tenant's of the building to have a chair placed in the building's lobby when needed.

Effective Communication

1. A Maryland doctor who had refused to pay for a qualified sign language interpreter for a patient's office visit agreed to institute a policy for hiring interpreters and notifying deaf patients that sign language interpretation will be provided on request at no cost to deaf patients. The doctor also agreed to train office staff about effective communication with patients with hearing impairments and to pay the complainant $300.

2. In New York a person who represents people who are deaf or hard of hearing complained that a doctor refused to hire qualified sign language interpreters for patients with hearing impairments. The doctor agreed to provide a qualified sign language interpreter for a patient's office visit when a request is made at least one week in advance. The doctor agreed that the request may be made by the patient's representative, or via a telephone relay communication, or by any other means chosen by the patient. The doctor also agreed to educate his office staff regarding this policy and the ADA.

3. A person with a visual impairment complained that a Massachusetts educational institute did not provide information about course offerings in alternative formats and did not make reasonable modifications in their procedures and practices to enable people with disabilities to take the courses. In addition, the person complained that the institute had a safety policy that excluded people with disabilities based on broad generalizations instead of actual risks. The institute agreed to make information about registration times and course offerings available on audio tape on a telephone information service used by people with disabilities. The information will also be available for distribution on audio tape and in large print if requested. The institute agreed to modify its admission policy and make determinations on a case-by-case basis as to whether a particular individual with a disability is able to function adequately and safely in a class. The institute agreed to make every effort to assist a person with a disability to attend the class of his/her choice. Technical assistance will be requested from various disability organizations so that all available information may be considered in order to assist a person with a disability to participate in a class in the most effective way.

4. A person with a hearing disability complained that a Michigan court failed to provide a qualified sign language interpreter during crucial proceedings. In mediation, the court agreed to provide a qualified sign language interpreter for the complainant if she or her attorney requests one at least three working days in advance of the date of the proceeding. The court agreed to engage in a process of self-evaluation to determine its level of compliance with all the other provisions of the
ADA.

5. A deaf individual complained that a Maryland doctor refused to pay for a qualified sign language interpreter for the complainant's office visits. The doctor agreed to pay the outstanding bill for interpreter services. The doctor agreed to change the office policy and establish a protocol for addressing the needs of people with disabilities. Specifically, a list of qualified sign language interpreters will be maintained by the office staff, potential patients who are deaf will be notified that qualified sign language interpreters will be provided free-of-charge for office visits, if requested in advance, and a sign stating this policy will be displayed in the office. The doctor agreed to have the staff educated regarding the ADA. The doctor also agreed to write an article for publication in a newsletter addressing the obligations of doctors under the ADA. Finally, the doctor agreed to arrange for an advocate of the ADA to speak at a gathering of physicians.

6. In California, a person who is deaf complained that an attorney refused to pay for a qualified sign language interpreter for the complainant's office visit. The attorney established a policy for providing effective communication for clients in the future. The attorney agreed to reimburse the complainant for the fee paid to the interpreter and to issue the complainant a refund check for his fee.

Policies and Procedures

1. In suburban Maryland, a wheelchair user complained that a restaurant refused to allow her mobility assistance dog to enter. The restaurant owner apologized and agreed to educate himself and his staff about the ADA. He agreed to contact other professionals in his field, as well as a restaurant trade organization, to inform them of his experience and educate them about the ADA. He agreed to make a donation to a charitable organization for service animals.

2. A private Virginia preschool agreed to hire a specialist to educate staff about behavior modification techniques to be used with children with behavioral disabilities and to have an ADA specialist educate staff about the requirements of the ADA. The preschool also agreed to formulate a new policy to address problems identified by parents of children with disabilities and to make a $150 donation every year for five years to an advocacy training center for parents of children with disabilities.

3. A New York dance club agreed to institute a policy to accommodate people with disabilities when they call to make arrangements to attend functions and to review all future contracts with performers to ensure that performers do not interfere with accessibility. The club also agreed to identify barriers and remove them if readily achievable, to provide four complimentary tickets to the complainant for any performance the complainant chooses and to make a substantial compensatory payment to the complainant.

4. A sports arena in California agreed to change its ticketing policy to make tickets for wheelchair-accessible seats available for all events through box office and telephone sales without the necessity of providing a "plaque" as proof of disability, allow companions to accompany individuals who use wheelchairs, and allow exchanges of inaccessible seats for accessible seats for individuals who use wheelchairs. The arena announced the changes in a press release.

5. A New Jersey professional school agreed to change its policy barring the complainant from attending because she has leukemia, to change its policy requiring the complainant to sign a special release form, and to refrain from disclosing the complainant's condition to other students.

6. A New York restaurant that had refused to allow a person with a hearing dog to enter agreed to post signs notifying the public that service animals are permitted to enter, train personnel regarding title III of the ADA, write a letter of apology to the complainant, and pay the complainant $200.
7. A person with a disability complained that a Maryland beauty salon denied service to her because she used a service animal. The owner agreed to notify each employee in writing that the management supports the ADA. In addition, the owner agreed to require employees to sign a form stating that they had received and read the Department's "Commonly Asked Questions About Service Animals in Places of Business" and agree to abide by its contents. Finally, the owner agreed to contribute $500 to a charitable organization for service animals.

8. Two Florida wheelchair users complained that a restaurant located in a shopping center refused to allow them to enter or to provide them service because they used wheelchairs. The owner agreed to welcome and serve both complainants as patrons. The owner agreed to post a sign in the front window of the restaurant stating a policy of nondiscrimination against people with disabilities. The owner agreed to educate all employees about the rights of people with disabilities. The shopping center owner agreed to provide space for a disability awareness event to be held at the shopping center, cooperate with the organization presenting the event, and contribute $250 towards publicity for the event. The restaurant owner agreed to contribute some of the refreshments for the event. Finally, the restaurant owner agreed to pay the complainants $500 and the shopping center owner agreed to pay $500 in attorney's fees.

9. In Pennsylvania a wheelchair user complained that a restaurant seated him only after he agreed to move from his wheelchair to a seat in a booth. The restaurant owner apologized and agreed to instruct her staff on managing the space in the restaurant so that it is accessible for patrons with disabilities.
The Connecticut Conference of Municipalities (CCM) is Connecticut’s statewide association of towns and cities. CCM is an inclusionary organization that celebrates the commonalities between, and champions the interests of, urban, suburban and rural communities. CCM represents municipalities at the General Assembly, before the state executive branch and regulatory agencies, and in the courts. CCM provides member towns and cities with a wide array of other services, including management assistance, individualized inquiry service, assistance in municipal labor relations, technical assistance and training, policy development, research and analysis, publications, information programs, and service programs such as workers’ compensation and liability-automobile-property insurance, risk management, and energy cost-containment. Federal representation is provided by CCM in conjunction with the National League of Cities. CCM was founded in 1966.

CCM is governed by a Board of Directors, elected by the member municipalities, with due consideration given to geographical representation, municipalities of different sizes, and a balance of political parties. Numerous committees of municipal officials participate in the development of CCM policy and programs. CCM has offices in New Haven (headquarters) and in Hartford.

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