

Disability Rights Legislation and Requirements for FHWA, State and Local Government Transportation Agencies: Compliance of Nondiscrimination in Programs, Practices and Policies:

Three laws that require accessible planning, design and construction, and integrations of people with disabilities into mainstream society:

- Architectural Barriers Act (1968), for Federal facilities
- Rehabilitation Act (1973), for Federal-aid programs
- Americans with Disabilities Act (1990) State and local government programs and facilities (ADA, title II).), Private sector (ADA, Title III)

The Americans with Disabilities Act, (1990) is a civil rights statute prohibiting discrimination against people with disabilities in all aspects of life, such as transportation, public services, employment housing, public accommodations, education, communication, worship, recreation, and health services. In essence, the ADA places responsibility for the inability of people with disabilities in becoming part of mainstream society on barriers (physical barriers, lack of information, and societal prejudice), not a person's disability. The ADA is the one civil rights law that protects every American if he or she has or develops a disability.

Americans with Disabilities Act - PUBLIC LAW 101-336:

(a) FINDINGS. The Congress finds that-

- (1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older; [...]
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health service, voting, and access to public services; [...]
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities; [...]

(b) PURPOSE. It is the clear purpose of this Act-

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Government agencies and their responsibilities:

Federal:

- Department of Justice (DOJ) designated as the regulatory agency for civil rights legislation.
- US Access Board develops accessibility requirements for ADA, and the Rehabilitation Act and enforces accessibility standards for federally funded facilities. Develops the Americans with Disabilities Act Accessibility Guidelines (ADAAG).
- US Department of Transportation (DOT) is an ADA designated agency for overseeing compliance of state and local governments for Section 504 and ADA, Title II. US DOT adopted the Americans with Disabilities Act Accessibility Guidelines (ADAAG) as design standards for implementing Section 504 and ADA. (49 CFR, Part 27). Federal funds cannot be used for projects and programs that discriminate against people with disabilities.
 - FHWA has compliance and implementing responsibilities for pedestrian travel on highways and pedestrian facilities.
- National Council on Disability (NCD) provides recommendations to the President and Congress on overall policy issues affecting persons with disabilities, and reports on Federal agency's activities and responsibilities relating to disability compliance.

Other Government Agencies:

- State and local government activities, programs, facilities, policymaking must comply with ADA, Title II, and if Federal-aid recipients they must comply with Rehabilitation Act, Section 504 and US DOT 49CFR regulations.

Federal Implementing Regulations:

ADA Title II, Nondiscrimination on the Basis of State and Local Government Services:

Protects people with disabilities from discrimination in services, programs or activities of all State and local governments.

- Title II definitions:
 - Public entity means --1) Any State or local government; 2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government;
 - Facility means all or any portion of buildings, structures, sites, complexes, *equipment*, rolling stock or other conveyances, *roads, walks, passageways, parking lots*, or other real or personal property, including the site where the building, property, structure, or equipment is located
- Relationship to other accessibility laws (35.103). Title II extends the prohibition of discrimination in federally assisted programs established by Section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance.
- Designated Agency, (Subpart G, 35.190) US DOT is a designated agency of the Americans with Disabilities Act. US DOT is required to oversee transportation compliance activities for State and local governments, and FHWA is responsible for pedestrian access to highways, roadways and walkways within the public r-o-w.
- Self Evaluation (35.105) State and local governments are required to evaluate existing services (this includes transportation and pedestrian facilities), policies, and practices for discrimination practices and barriers. This is a prerequisite for developing the Transition Plan.
- General Prohibitions against Discrimination (Subpart B—General Requirements, 35.130) People with disabilities shall not to excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be the subject of discrimination by any public entity.
- Maintenance of Accessible Features (35.133) Requires the accessible features of facilities to be maintained.
- Existing Facilities (35.150) Existing facilities are to be readily accessible to and usable by people with disabilities. Compliance planning was required to commence on 1975 and removal of barriers and the installation of curb ramps were to have been completed by 1995. Planning requirements (both are required under Section 504 and ADA, Title II:

- Self-evaluation 35.105 identifies the barriers and inaccessible features and facilities and requires public participation in the development of this document and Transition Plan. Includes requirements for historic property and preservation issues.
- Transition Plan (35.150) identifies the barriers to be removed, the timetable for completion and funding sources for removing information and physical barriers and the installation of curb ramps. Work included in the Transition Plan was to be completed by 1995, but because of the lack of compliance and oversight this is an ongoing process. The courts, in ADA and Section 504 discrimination lawsuits, generally review the Transition Plan's implementation process and progress. CFR 49, Part 27 requires FHWA funding recipients to submit their Transition Plan.
- New Construction and Alterations, (35.151) are required to be made accessible and usable by people with disabilities and comply with the minimum design standards Americans with Disabilities Act Accessibility Guidelines (ADAAG) to the maximum extent feasible. ADAAG is codified by US DOT as standards, and are to be used for pedestrian facilities in the public r-o-w. (This section covers historic preservation and curb ramps.)
- Communications (Subpart E, 35.160) Visual information such as signs and signals do not provide information in a format the people with visual disabilities can use—providing alternative information formats may be necessary. (a) A public entity shall take appropriate steps to ensure that communications with applicants, participants and members of the public with disabilities are as effective as communications with others. (b) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

ADA Design Standards: Americans with Disabilities Act Accessibility Guidelines (ADAAG):

ADAAG is developed by the US Access Board and adopted as design standards by DOJ and DOT. ADAAG was codified by the US DOT, 49 CFR, Part 27. The design criteria are the minimums for complying with the ADA Titles II and III. The ADAAG standards were developed for buildings and facilities, though ADAAG is to be applied to all public environments and designers are required to adapt the general standards to the maximum extent possible to the environment being designed. These minimums are the foundation for designing all pedestrian environments, and better design practices are encouraged to be applied whenever possible. Entities are encouraged to design and set codes beyond the minimum standards to facilitate access for a wider spectrum of people—they may not design below the standards.

An entity is still responsible for making the features/facility accessible if a specific standard has not been adopted for that feature/or facility. The nondiscrimination

requirements for usability by people with disabilities in ADA are the overarching regulations that must be applied. There are many roadway features that are not being designed to be usable by people with disabilities. It is up to planners and designers to apply accessible features when building new and altering facilities or alter inaccessible elements to existing facilities (implement through the Transition Plan). Specific standards for public rights-of-ways are in development by the US Access Board.

Resources:

US Access Board: The Access Board is the Federal agency responsible for developing ADA design standards. The following publications on accessible pedestrian design are available on the Board's website at www.access-board.gov

- *Accessibility Guidelines (ADAAG)*
- *Notice of Availability of Draft Public Rights-of-Way Accessibility Guidelines*
- *Accessible Public Rights-of-Way Design Guide*
- *Pedestrian Access to Roundabouts*
- *Detectable Warnings: Synthesis of US and International Practice*
- *Accessible Pedestrian Signals*
- *Advisory Committee Report Building a True Community: Accessible Public Rights-of-Way*
- *Interfacing Accessible Pedestrian Signals and Traffic Signal Controllers*

The Federal Highway Administration: Pedestrian documents and reports available on the web site www.fhwa.dot.gov/environment/bikeped. Research and best practices design publications on pedestrian accessibility:

- *Designing Sidewalks and Trails for Access, Part I, A Review of Existing Guidelines*, www.fhwa.dot.gov/environment/sidewalk (electronic formats only-hardcopies out of print)
- *Designing Sidewalks and Trails for Access, Part II, Best Practices Guide*, www.fhwa.dot.gov/environment/sidewalk2 (electronic formats only-hardcopies out of print, HTML version incorporates all the changes listed in the errata sheet: www.fhwa.dot.gov/environment/errata.htm)
- *Design Guidance Accommodating Bicycle and Pedestrian Travel: A Recommended Approach, A US DOT Policy Statement on Integrating Bicycling and Walking into Transportation Infrastructure*

Manual on Uniform Traffic Control Devices (MUTCD) provides the standards for traffic control devices and includes guidance on Accessible Pedestrian Signals, Chapter 4E. and Temporary Traffic Control Elements, Chapter 6D. The MUTCD is available at <http://mutcd.fhwa.dot.gov/>

FHWA Pedestrian and Bicycle Safety - includes pedestrian and bicycle safety resources. http://safety.fhwa.dot.gov/programs/ped_bike.htm

FHWA Pedestrian and Bicycle Safety Research - provides information on issues and research related to improving pedestrian and bicyclist safety.
www.tfhrc.gov/safety/pedbike/pedbike.htm

Other US DOT websites:

U.S. Department of Transportation Accessibility Website - The Department is committed to building a transportation system that provides access for all Americans. www.dot.gov/accessibility/

[Bureau of Transportation Statistics](http://www.bts.gov/publications/freedom_to_travel/) (BTS), Freedom to Travel, (http://www.bts.gov/publications/freedom_to_travel/), a report on the travel issues for people who have disabilities.

Institute of Transportation Engineers:

[Alternative Treatments for At-Grade Pedestrian Crossings](#)

An informational report, which documents studies on crosswalks and warrants used by various entities

ITE's website, www.ite.org/library/accessibleint.asp, has information on accessible intersection design, *Electronic Toolbox for Making Intersections More Accessible for Pedestrians Who are Blind or Visually Impaired*

Informational Websites:

Accessible Design for the Blind: information and research on making travel safer and accessible for pedestrians with disabilities, www.accessforblind.org

The Pedestrian/Bicycle Information Center (sponsored by FHWA):
www.walkinginfo.org
www.bicyclinginfo.org

US Department of Justice:

US DOJ has publications and ADA information, Q & As, on their web site www.ada

8/10/2004

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