

Directory of Local ADA Officials



A publication of The United
States Conference of Mayors

THE NATIONAL LEAGUE OF CITIES HANDBOOK



**A GUIDE
TO SERVICES AND
PARTICIPATION**

THE NATIONAL LEAGUE OF CITIES HANDBOOK

CHAPTER 4	NLC HISTORY
CHAPTER 3	HOW NLC IS ORGANIZED
CHAPTER 2	HOW TO PARTICIPATE IN NLC
CHAPTER 1	NLC SERVICES AND HOW TO USE THEM

*We will ever strive for the ideals and sacred things
of the city, both alone and with many;*

*We will unceasingly seek to quicken
the sense of public duty;*

We will revere and obey the city's laws;

*We will transmit this city not only
not less, but greater, better and more beautiful
than it was transmitted to us.*

From the oath of the Athenian city-state

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AND
PARTICIPATION**

CHAPTER 4
NLC History

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NLC Services and How to Use Them



Dear Local Official:

Membership in the National League of Cities is a great investment for your community, and it's certainly one of the most rewarding. It is even more rewarding, and cost effective, when you know how to get the most out of NLC, and that's what this handbook is all about.

Across the country, municipal leaders are grappling with similar challenges, and are responding with innovative ideas and programs. Through membership in NLC, you can learn what other cities and towns are doing...which approaches are most effective ...and how to put proven solutions to work in your community, without risking costly mistakes.

The League is a diverse and growing organization dealing with virtually every issue that affects local government. At NLC, you would expect to find answers to questions about the day-to-day realities of running a city or town — refuse collection, employment practices, or police management. But governing today involves issues and problems local officials didn't even think about twenty, forty or sixty years ago—issues like the information superhighway, hazardous waste management, and international trade—and you'll find information to answer questions on these topics at NLC as well.

But getting the most out of NLC is more than simply knowing where to go with a question.

Most of us grew up learning that we get out of any endeavor what we put into it. If that's so, then the secret to getting the most out of the National League of Cities is

This publication is distributed free of charge to all local elected officials in NLC direct member cities and to state municipal leagues. To obtain additional copies, or for information about other NLC publications, contact:

Center for Public Affairs
National League of Cities
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 626-3120

Fourth Edition October, 1994

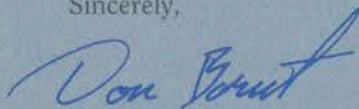
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to put a lot of yourself into it. Attend the Congressional City Conference and Congress of Cities; participate in the policy process by serving on one of the policy or special committees in your area of interest or expertise; attend regional meetings, seminars and training sessions; read *Nation's Cities Weekly* and the other NLC publications; take part in the activities of the special caucuses and affiliate groups in which you have an interest.

In short, NLC is more than simply a mechanism by which cities find solutions. Your personal investment of time and effort in NLC activities will pay off handsomely for your community, for your citizens, and for you as a local official. I hope this handbook will help you make that investment.

Sincerely,



Donald J. Borut
Executive Director

NLC IN BRIEF

The National League of Cities is the country's oldest, largest and most representative organization serving municipal governments.

Founded in 1924 as the American Municipal Association by ten state municipal leagues, today its direct members include 49 state municipal organizations and more than 1,400 communities of all sizes. Through the



"NLC is dedicated to strengthening the performance and capabilities of local governments"

membership of the state municipal leagues, NLC represents more than 17,000 municipalities.

Although over 85 percent of the nation's municipalities with populations greater than 100,000 are members of the National League of Cities, the League is not just an organization for larger cities. More than 75 percent of NLC's direct members have populations less than 50,000, and small cities, towns and villages play an equal and key part in the activities of the National League of Cities.

In addition, the National League of Cities is the only municipal organization in which all elected and appointed policy leaders from cities and towns may join together to establish unified policy positions, to advocate these poli-

cies forcefully, and to share information that strengthens municipal government throughout the nation. NLC's diverse membership is one of its greatest strengths, and the organization's non-partisan structure takes full advantage of the broad base the membership provides. NLC's mission is multifaceted. As a membership organization of general purpose local governments, NLC is dedicated to advancing the public interest, building democracy and community, and improving the quality of life by strengthening the performance and capabilities of local governments and advocating the interests of local communities.

Acting on behalf of local governments, NLC's goals include influencing national policy and building understanding and support for cities and towns. NLC is an authoritative source of information on cities and towns and is pro-active in helping to set the national agenda on municipal issues. Through surveys and research, publications and skills training programs, NLC assists local leaders in their jobs as policymakers and public servants.

NLC AT A GLANCE

SERVICES TO MEMBERS

- Representing cities and towns in Washington, D.C.
- Political education and advocacy
- How-to guidebooks, research studies, opinion surveys
- Research and reference "hotline services"
- Educational seminars and leadership training
- Research and program development
- Futures process

PARTICIPATION BY MEMBERS

- Steering and policy committees
- Constituency and member groups
- Task forces
- International Municipal Consortium
- Leadership posts and elective offices
- Leadership networks

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CHAPTER 1

NLC SERVICES AND HOW TO USE THEM

NLC SERVICES

Representing Cities in the Nation's Capital

NLC offers a wide variety of services that can benefit your community and you as an individual local official.

All of the departments or offices mentioned below can be reached by mail at the National League of Cities, 1301 Pennsylvania Ave., NW, Washington, D.C. 20004. Individual telephone numbers are listed for each office.

REPRESENTING CITIES IN THE NATION'S CAPITAL

One of the League's primary services is its representation of municipal interests in Washington. NLC members appear before Congress to comment on legislation and policies affecting cities. NLC staff represent municipal interests when regulations are being written and administered by federal agencies. NLC ensures that the President and the cabinet members know where the nation's cities and towns stand on a wide range of issues.



NLC's legislative advocacy activities are carried out by the Center for Policy and Federal Relations, which prepares and coordinates testimony, works with Congressional and agency leaders and staff members, prepares legislative briefing materials for the NLC Board and the policy committees, and helps keep members up to date on legislative events through stories and special reports in *Nation's Cities Weekly* newspaper and through periodic legislative bulletins.

To support the League's lobbying efforts, NLC staff devotes considerable time to identifying and analyzing emerging urban and

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LEGAL REPRESENTATION

rural trends, issues, and problems, and evaluating existing and proposed federal policy and program options. Many of these activities are undertaken through the NLC policy development process using the steering and policy committees, and through cooperation with other public interest groups.

For more information on a specific bill or a specific issue, contact the Center for Policy and Federal Relations at (202) 626-3020.

The national legislative and executive branches are not the only parts of the federal government whose actions affect cities and towns. The federal judiciary, by interpreting laws through its rulings in specific cases, can often change the rules under which municipalities must carry out their daily responsibilities.

NLC keeps a close watch on the judicial process, monitors and reports on major cases, and often participates in cases where a major city interest is at stake. Among the specific issues that NLC is particularly interested in



Members rank information as one of NLC's most valuable membership benefits

are cases dealing with state or local governments' ability to govern without hindrance by federal regulation; preemption of state or local authority by federal statutes and regulations; the conditions under which federal grants are available to state and local governments; state taxing powers; intergovernmental tax immunities; and the immunity of state and local officials to a variety of legal judgments.

NLC's involvement in legal cases hinges on the degree to which the issue being litigated conforms or conflicts with existing NLC policy, the overall importance of the issue to all cities, the potential reach of the court's decision, and the chances of success or loss in the case.

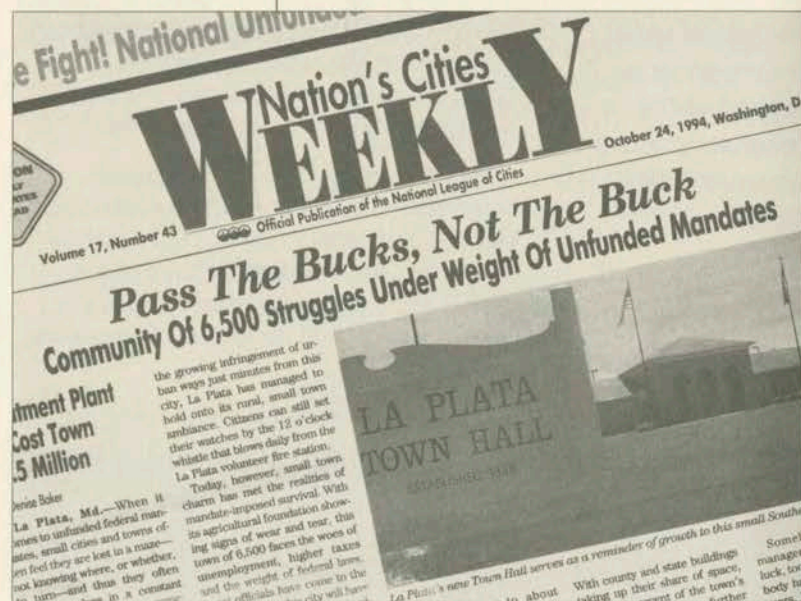
For more information on emerging legal issues, contact the Center for Policy and Federal Relations at (202) 626-3020.

INFORMATION FOR LOCAL GOVERNMENTS AND LOCAL OFFICIALS

Another of NLC's broad objectives is to provide local government officials with the information they need to make intelligent decisions and manage local operations effectively. The League approaches this objective by publishing a weekly newspaper and other publications, by conducting education and training programs, and by maintaining a municipal reference service and an electronic communications network. In addition, NLC carries on its own research agenda about municipal conditions and about federal policies that affect cities and towns. All of these services can prove useful as you work for your community.

NATION'S CITIES WEEKLY AND OTHER PUBLICATIONS

The League's weekly newspaper, *Nation's Cities Weekly*, is NLC's most regular contact with its members. The *Weekly* covers events and issues of special interest to local officials including the doings of Congress, the White House, Cabinet agencies and the rest of the federal establishment; along with important events of the League, state leagues and member cities and towns. Major feature columns that appear in the newspaper include "City Ideas That Work," "Small Cities and Towns," and "Trends and Resources."



Each direct member's dues cover a number of subscriptions to the *Weekly* (actual number depends on population, just as dues do), and members can take out extra subscriptions at a special reduced rate. For further information on subscriptions, contact the *Weekly's* circulation office at (202) 626-3040.

The *Weekly* carries classified advertising for city and county jobs, as well as for services and equipment of interest to local governments. For more information, or to place a classified ad, contact the *Weekly's* classified advertising sales office at (202) 626-3040.

Suppose, however, that what you're really interested in is making your opinion known through the paper, or seeing the *Weekly* cover one of your community's events or successes. There are several ways to do this.

One is to write a letter to the editor; the *Weekly* publishes worthwhile letters. Another is to make sure that *Nation's Cities Weekly* is on the mailing list for your city's press releases, or any press releases that your own office issues. Still another is to write or call the *Weekly's* managing editor to suggest a story; the paper's editorial staff is open to new ideas and good stories. The simplest way to do any of these is to contact the managing editor by mail or call (202) 626-3040.

NLC's publications include a wide range of guidebooks, case studies, pamphlets, brochures, and other documents on topics of interest to local governments and local officials. These are all listed in the League's annual publications catalog; to request a catalog write to NLC's Publications Sales Office or call (202) 626-3150.

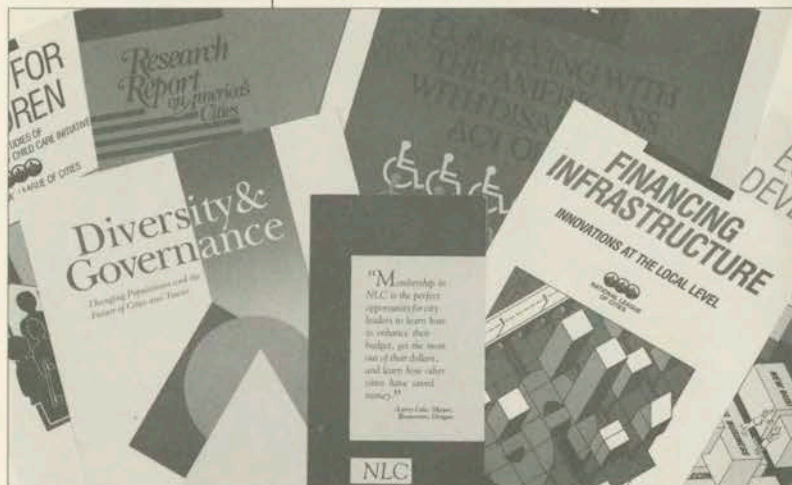


MUNICIPAL REFERENCE SERVICE (MRS)

The League's library, the Municipal Reference Service, provides the connection to a variety of information sources on many topics related to local government — from examples of effective and innovative programs to government statistics to bibliographies on specific topics.

The MRS staff can provide answers to many questions over the phone. When questions require research, staff are committed to responding within a week of receiving a query and will do their best to meet requests for rush service of one or two days. Resources used by staff include a library collection of approximately 30,000 books, 600 periodical subscriptions, online databases, state municipal league publications, and special reference files.

One database developed by staff, *Examples of Programs for Cities*, identifies successful programs and ordinances that can



be used as models by other cities. The database provides a description of the program, including the year it started and who to contact for more information. As new "hot topics" develop, the staff search for the kinds of programs that are of most interest to local officials.

LOCAL GOVERNMENT SERVICES

This reference service is available to officials from direct member cities, state municipal leagues and associate members by writing to the Municipal Reference Service or by telephoning (202) 626-3130.

Local Government Services is responsible for conceptualizing, developing and managing a comprehensive program of products and services designed to respond to needs of cities and towns.

These services include publishing a subscription series called *Issues & Options*. The series offers practical ideas for local government leaders by highlighting, in a concise, easy-to-read format, key policy options and programmatic tools that local officials need to lead their communities more effectively. Published ten times per year, each *Issues & Options* report provides readers with an overview, tools and techniques, examples, samples and checklists, and a list of resources related to the topic.

NLC also offers a wide variety of training and technical assistance services. Seminars on legislative and community development topics are offered regionally and nationally. Guidebooks for local officials are available for purchase and technical assistance — both on-site and long distance — is available in a number of areas, including downtown revitalization and compliance with the Americans With Disabilities Act. Training for the purpose of enhancing local officials' skills and abilities in problem solving, community service planning and coalition building are sponsored through NLC's Leadership Training Institute.

For more information about NLC's Local Government Services programs, call (202) 626-3181.

LEADERSHIP TRAINING INSTITUTE

*"Build
opportunities for
excellence and
innovation."*

RESEARCH AND PROGRAM DEVELOPMENT

NLC believes that effective city government is about effective leadership. It also believes that the skills and abilities needed to function as an effective leader can be learned and further developed. The Leadership Training Institute was established to support and underscore the important role that local officials play in enhancing the vitality of cities and pro-actively responding to the needs of those that live and work in them. The Institute strives to equip officials with the information, knowledge and skills required to build opportunities for excellence and innovation.

For more information, call the Training Hotline in the Center for Education and Information Resources at (202) 626-3170.

As part of NLC's mission to be a source of information on municipal governments, the organization conducts an extensive research program. Areas such as municipal finance and service delivery are main topics of NLC's research. The organization also conducts regular opinion surveys of city and town leaders. This research and survey work are valuable as a basis for news conferences and other ways of shaping public discussion through the media. They also reinforce the ongoing communications between NLC and the local officials that NLC serves and are part of program efforts to address city and town needs.

As an example, the Children and Families in Cities Program encourages and enables local leaders to take action on behalf of at-risk children and their families through direct assistance, research, policy analysis, and networking. NLC's project on Urban Policy and Economic Development helps cities use local economic policies and tools to reduce poverty.



FUTURES PROCESS

For information, write the Center for Research and Program Development or call (202) 626-3030.

NLC has established a "futures" process to help city and town officials be more aware of the ways that our changing society and world are affecting municipal government. The Advisory Council — composed of elected officials who have served out a term on the NLC Board of Directors — is responsible for this process. Focusing each year on a different topic, they prepare a "Futures Report" to the NLC membership. This report in turn is the basis for a variety of follow up activities designed to address local needs.

As it begins its study each year of a new futures topic, the Advisory Council requests information from each member city about local approaches to the issue. Cities can respond to this "call for papers" and thus contribute to the futures process. Examples of innovative or model city programs are highlighted in NLC's weekly newspaper and in the final Futures Report.

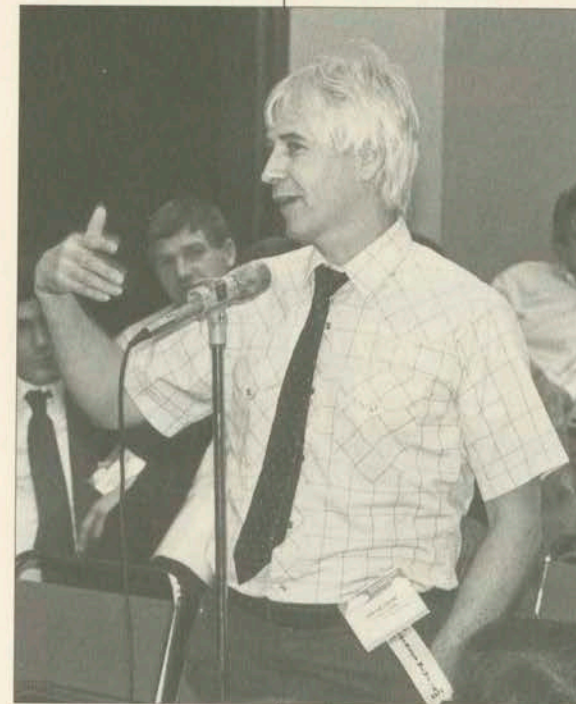
For more information, write the Center for Research and Program Development or call (202) 626-3030.



CHAPTER 2

HOW TO PARTICIPATE IN NLC

NLC offers many ways to participate in what it does. For those who want to jump right into the organized and more structured parts of the NLC organization, there are policy committees, constituency groups, task forces, speaker opportunities and seats on the Board of Directors.



In keeping with the diversity of NLC's membership, and the organization's desire to be open and accessible, there are other more informal means for local officials to contribute to and benefit from NLC.

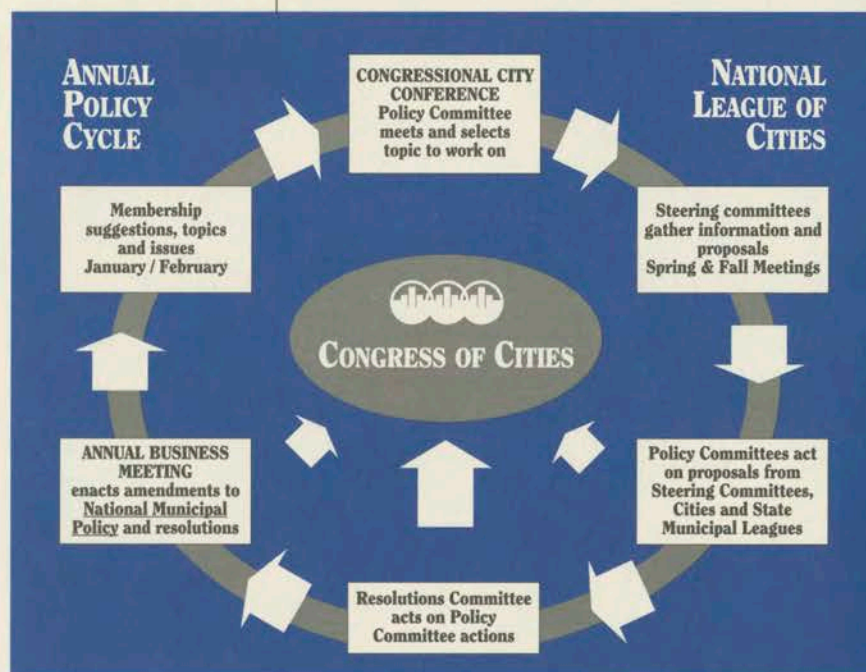
For example, NLC offers the best vehicle for local officials to simply network with their peers from across the country and share ideas. More practical experiences are shared and more new ideas are generated over the lunch table at NLC's annual convention than might be possible in months of research. Even small commitments of time and energy, such as attending a regional training seminar, joining in on a round-table discussion or being a regular reader of *Nation's Cities Weekly*, can enhance your effectiveness as a local leader.

Every local official can build his or her own special and personal relationship with NLC. To see how you can be a part of this wide range of activities, look closely at how some of NLC's activities are carried out.

POLICY COMMITTEES

The policy process operates throughout the year, and policy committee meetings at the Congressional City Conference and the Congress of Cities offer attendees an opportunity to be part of the policy process.

Attending the policy committee meetings at the two annual meetings and joining in the discussions are, of course, the easiest ways to take a hand in shaping the National Municipal Policy — the platform for the NLC membership. At these committee meetings, you are welcome to offer ideas, experiences, and opinions on policy issues of importance to cities and towns and to vote on recommended policy positions.



If you want to participate directly in the work of one of the policy committees, your first step should be to let the director of your state municipal league know of your interest. Each policy committee has about 200 members, most of them nominated by state leagues and appointed by the NLC President. Depending on the municipal population of your state, there can be from three to seven people from your state on each committee.



There are five standing policy committees, each of them dealing with specific issues.

The **Finance, Administration and Intergovernmental Relations policy committee** deals with national economic policy, intergovernmental relations, capital financing, municipal bonds, municipal management, antitrust issues, citizen participation and civil rights, labor relations and fire policy.

The **Energy, Environment and Natural Resources policy committee** is responsible for policy on air quality, water resources, wastewater treatment, energy, waste management, hazardous and nuclear waste, urban aesthetics, noise control, and disaster relief.

The **Community and Economic Development policy committee** responsibilities include national urban policy, economic development, community development and community development block grants, housing and neighborhood development, federal buildings, land use, recreation and parks, and historic preservation.

The **Human Development policy committee** analyzes and develops policy on issues such as employment and job training, Social Security and unemployment insurance, income support programs, immigration and refugees, health, mental health, AIDS, children-at-risk, homelessness, education, equal opportunity, social services and criminal justice.

The **Transportation and Communications policy committee** is responsible for policy on public transit, streets and highways, air transportation, railroads and waterways, infrastructure, hazardous materials transportation, and cable television and telecommunications.

The policy committee members and chairs are appointed early in each year and hold their first meeting during the annual Congressional City Conference in March. As you might suspect, being a member of one of these policy committees can be a lot of work. Doing it well takes time and thought,

and it means attending meetings and doing homework. But it's worth the effort. You'll have a hand in the writing of the National Municipal Policy as a policy committee member, and if you have ambitions for an NLC elected office, doing a good job as a member of a policy committee is a good way to build a foundation for later achievements.

The work of these committees is guided by five steering committees whose members are chosen by the appropriate policy committee chairs. While the policy committees meet only twice a year, the 35-member steering committees meet more frequently, usually at the two annual meetings in March and December and also in June and September.



The product of these meetings — amendments to the National Municipal Policy and separate resolutions — are not final until they are adopted by the voting delegates at the annual business meeting during the Congress of Cities. Before that happens, however, the recommendations of each policy committee are submitted to the NLC Resolutions Committee, which holds its only meeting during the Congress of Cities. The Resolutions Committee approves or disapproves proposed amendments to the National Municipal Policy and separate policy resolutions. Those that it approves are passed on to the voting delegates at the annual business meeting.

CONSTITUENCY AND MEMBER GROUPS

The annual business meeting is the grand finale. The proposed policy amendments and resolutions are debated — sometimes vigorously — and voted on.

The National Municipal Policy is only one product of the policy process. The policy committees also help the Board of Directors draft its annual "Action Agenda," a statement of legislative and program priorities, which is adopted at the Board's meeting during the Congressional City Conference. The separate resolutions approved at the Congress of Cities (and occasionally at other times throughout the year) are the League's third formal policy mechanism.

You don't have to be a policy committee member to influence NLC policy. Any NLC member can attend any committee meeting and suggest issues for which NLC policy statements are needed or propose specific amendments or resolutions for consideration by the committees. All NLC members are asked to suggest policy amendments just prior to the Congress of Cities.

Another way to take an active role in NLC is to work with one of NLC's constituency, member or affiliate groups.

Constituency groups are groups within the NLC membership who share common interests. They have grown up over the years to make sure that the interests of all segments of the membership are reflected in the policies and programs of the League. NLC publishes a quarterly newsletter, *Constituency and Member Group Report*, that highlights the activities of the caucuses and constituency groups and reports on issues of special interest to their members. The newsletter is available to all interested officials.

The oldest of these groups is the **National Black Caucus of Local Elected Officials (NBC-LEO)**, created in 1970 to represent the interests of Black elected officials in NLC's membership. One of NBC-LEO's objectives is increasing minority participation on the League's steering and policy committees to make sure that policy and program recom-



mendations reflect minority concerns and benefit minority communities. The group also works independently with its members to inform them about issues affecting the African-American community and to devise ways to achieve Black community objectives through legislation and direct action. NBC-LEO conducts its annual meeting and skill building workshops in conjunction with the Congress of Cities.

Women in Municipal Government (WIMG) was founded in 1974 to provide a forum for local elected women who are active in the League. Its objectives include encouraging active participation of women officials in NLC, identifying qualified women officials for NLC leadership positions, and promoting issues reflecting the interests and status of women in cities. As part of its activities, WIMG sponsors skill-building workshops for women officials at the two annual meetings.

The **Hispanic Elected Local Officials (HELO)** was founded in 1976 to serve as a forum for communication and exchange among Hispanic local government officials within NLC. Its goals are to discuss issues and concerns of Hispanic officials and to provide an opportunity for greater participation in the League. HELO holds meetings at the Congress of Cities and the Congressional City Conference.

The **Asian Pacific American Municipal Officials (APAMO)** constituency group was established in 1985 to encourage the full participation and active involvement of Asian Pacific American officials in the organization and policy making processes and programs of the League. It promotes issues of interest to Asian Pacific Americans, monitors the status of Asian Pacific Americans in our cities, and works with other national, state or local organizations concerned with municipal government and Asian American issues.

The **Small Cities Council (SCC)** was founded in 1975 to give officials from small cities and towns greater participation in NLC's policy

process and to make sure that the needs of small communities are fully recognized and reflected in NLC policies and programs. The Small Cities Council also serves as a forum to meet the special information and training needs of officials from small cities and towns. Its membership is made up of elected officials from municipalities with populations of less than 50,000 from each state; these officials are appointed for two year terms by their state leagues.



Another special caucus is the **University Communities Caucus**. Cities with universities or colleges within their borders can participate in this group. UCC, founded in 1978, gives city officials a chance to share ideas on how university resources can be brought to bear on community issues. UCC also provides a forum for discussion of problems common to university communities. Meetings are held in conjunction with NLC's two annual meetings, while various projects are pursued throughout the year.

The **Gay, Lesbian and Bisexual Local Officials (GLBLO)** constituency group was formed in 1993 at the Orlando Congress of Cities. GLBLO is a voluntary association of local elected and appointed officials formed within the National League of Cities to encourage the active involvement and full participation of gay, lesbian and bisexual municipal officials

ASSOCIATE MEMBERS

and their non-gay supporters in the organization and programs of NLC. GLBLO serves as a key resource to NLC in identifying and providing names, qualifications, expertise, and interests of gay, lesbian and bisexual officials for NLC programs and activities. Meetings of the group are held at NLC's two annual conferences.

For more information, call Constituency and Member Group Services at (202) 626-3169.

The National League of Cities Associate Member program is designed to meet the needs of corporations and other institutions which do business with — and need to know what is going on in — the nation's cities. Associate membership provides a link and access to key municipal decision-makers. For information about specialized benefits for associate members, call (202) 626-3190.

TASK FORCES

The League also sets up special task forces to concentrate on specific issues, problems or ideas. In recent years, for example, there have been special task forces on international trade, the future of youth in America's cities and the city role in education, and crime and violence in cities and towns. These groups are authorized by the Board of Directors, usually for a fixed period, and are appointed by the NLC President. They have a clearly defined job to do, and they usually make recommendations to NLC's policy committees and publish reports on their work. Appointments to the NLC task forces are made on the basis of experience and expertise; members are chosen to reflect the general regional and size distribution of NLC's membership.

INTERNATIONAL MUNICIPAL CONSORTIUM

Established in 1991, NLC's International Municipal Consortium is the focal point for local government priorities in the international arena. It is designed to serve as an education and information exchange network for municipal officials who are engaged in or interested in issues having an international dimension.



cial to share their international experiences and expertise; and, building and maintaining relationships with other organizations active in international projects.

For information on NLC's International Municipal Consortium, call (202) 626-3018.

LEADERSHIP POSTS AND APPOINTMENTS

There is always room for leaders in NLC, and there are a number of ways to become part of the team that guides NLC's activities. Some of the League's leadership positions — especially committee seats and chairmanships — are appointed positions, while others are elected offices.

NLC is governed by a Board of Directors which is made up of the President, First Vice President, Second Vice President, all Past Presidents still in government service, and 40 other members. Twenty members of the Board are elected each year during the annual business meeting to serve two year terms. The Board of Directors acts on behalf of the membership in making decisions that affect organizational policies, procedures and finances.

RUNNING FOR NLC OFFICE

Running for office is something you know about, and running for NLC's elective offices is as challenging and rewarding as running for local office.

In general, nominations for NLC offices and for the Board of Directors are made by the Nominating Committee at the Congress of Cities after hearing brief speeches on behalf of the candidates. The Nominating Committee's report is distributed and published at the Congress of Cities, and the voting takes place during the annual business meeting; newly elected Officers and Board members take office on the last day of the Congress of Cities.

A certain amount of campaigning is done for these offices, and the campaigning adds to the interest and excitement of the Congress of Cities.

If you are interested in running for a Board seat or for an NLC office, following the steps below should help you do it most effectively.

First, contact your state league director and announce your interest. Tips and support from your state league director can often make the difference between a winning and a losing campaign.

Second, announce your candidacy by sending a letter to NLC's President or Executive Director and to all members of the Nominating Committee when they are appointed (usually late in September). The letter should include an NLC Candidate Data Form in addition to any other qualifications statement or campaign literature you have developed.

Third, conduct your campaign personally through telephone calls and letters to other elected officials you have met through NLC activities and through personal contacts at the Congress of Cities.

Fourth, make sure that your name is formally placed in nomination at the Nominating Committee hearing at the Congress of Cities. Nominations for the NLC officer positions are the first item of business at the hearing. Then, nominations for the Board are proposed alphabetically by state, and each candidate is permitted to have one short

nominating speech made on his or her behalf and two very brief seconding speeches.

If you run for a Board position or an NLC office, you should keep the following factors in mind.

The Nominating Committee has the responsibility to insure that the individuals recommended for the Board are not only active in NLC and their state leagues, but also reflect the diversity of NLC's membership in terms of race, sex, geography, and city size. These criteria can make it difficult, for example, for a candidate from a given state to receive the approval of the Nominating Committee if another elected official from the state is already a member of the Board and has another year left to serve.

Among the Officers, only the position of Second Vice President is normally contested. The other Officers usually simply rotate upward.

These elective offices are honors, certainly, but they are more than just honorary positions. They entail work, travel, and time away from city hall. As the senior representatives of the nation's cities and towns, the NLC Officers and Board members are called on to testify before Congress, represent the League to the national press, and speak at state league meetings. It all adds up to hard work, but it is worth it.





NLC's five **standing policy committees** offer a total of roughly 1,000 opportunities to help lead NLC's policy making process and each policy committee has its own steering committee with approximately 35 members who serve one-year terms.

The policy committee members are selected by the state leagues and appointed by the NLC President for one-year terms. Each policy committee's seats are apportioned according to a

state's municipal population:

Up to 1,250,000—3 seats; 1,250,001 to 2,500,000—4 seats; 2,500,001 to 5,000,000—5 seats; 5,000,001 to 10,000,000—6 seats; 10,000,001 or more—7 seats

If you're interested in one of the five policy committees, let your state league director know.

The members of the **steering committees** are selected by the committee chairs. Steering committee members are chosen for their experience and expertise in the subjects covered by each policy committee.

The NLC Nominating Committee and Resolutions Committee also play a leadership role in NLC.

The **Nominating Committee** is appointed by the NLC President and normally consists of 15 members. The Committee deliberates, debates, and recommends candidates for election as NLC Officers or Board members. The most contested positions are the office of Second Vice President and the approximately 20 Board of Directors seats that become vacant each year.

THE STATE MUNICIPAL LEAGUES

The **Resolutions Committee** is made up of the Board of Directors, plus one member from each state not represented on the Board (these members are appointed by their state league directors), and as many as ten other members named by the NLC President.

State municipal leagues occupy a special position within the National League of Cities. They were, of course, the first and founding members of the League, and they continue to play an important part in NLC activities.

State municipal leagues are dues-paying members of NLC along with the direct member cities. Each league casts a block of 20 votes in the affairs of NLC. State leagues appoint from 3 to 7 members (depending upon state population) of each NLC policy committee. Eight state league directors serve on NLC's Board of Directors each year. State leagues make recommendations for NLC steering committees and usually nominate and endorse city officials from their states for election to the NLC Board of Directors.



For officials of cities that are members of a state league but not direct members of NLC, the state league is the prime contact with the activities of NLC; for officials of direct member cities, the state league is an avenue to direct participation.

In short, participation in state league activities is a good way to find out about participation in the activities of the national organization.



CHAPTER 3

How NLC Is ORGANIZED

HOW NLC IS ORGANIZED

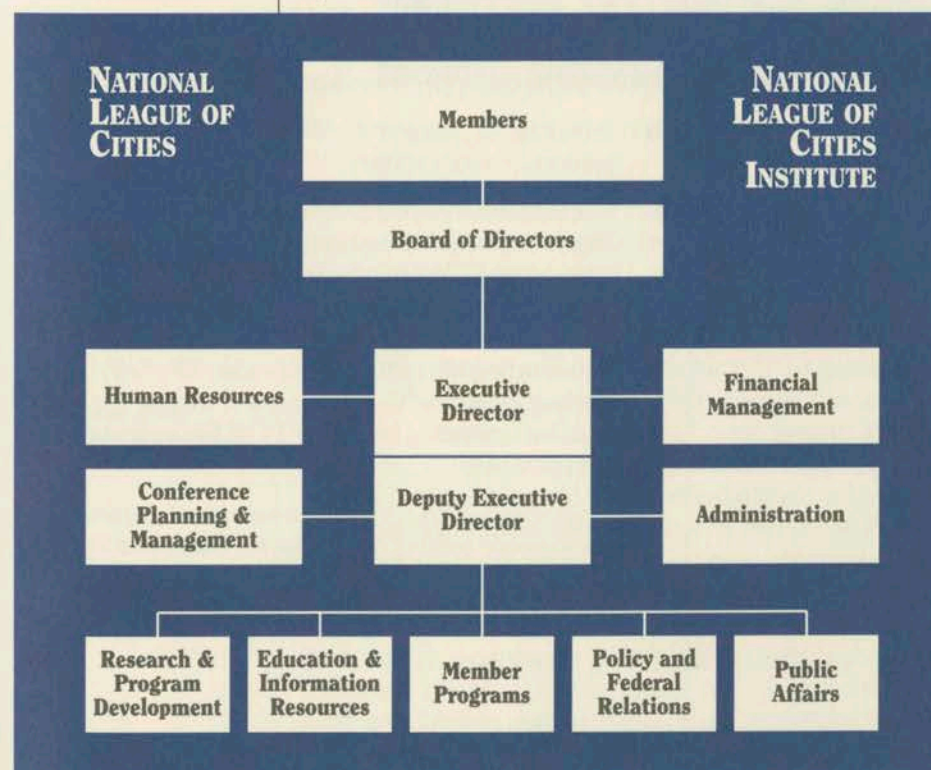
NLC Offices

The interests of the membership are represented by local officials who serve as officers, board and committee members, and by professional staff.

The League's Officers—President, First Vice President, Second Vice President, Immediate Past President—are elected annually by the voting delegates at the annual business meeting. The Board of Directors includes those Officers, all Past Presidents still in municipal office, as well as league directors, and the remaining positions are filled by mayors, council members, and commissioners from cities of all sizes and regions.

Supporting the Officers, the Board and the policy committees is NLC's headquarters staff, headed by an Executive Director appointed by the Board of Directors.

The NLC Executive Office directs the day-to-day activities of the League, works with other public interest groups to advocate municipal government interests, and maintains close working relationships with the 49 state municipal leagues. NLC's other staff operations are divided by function into several offices.

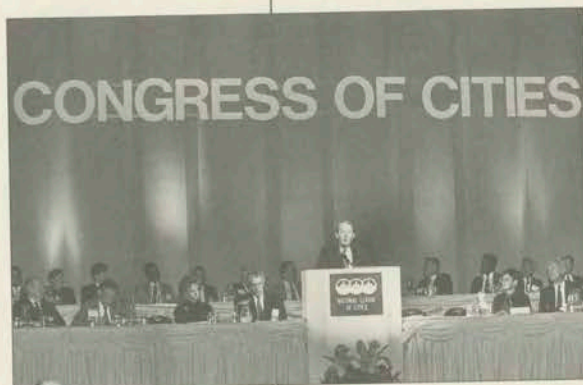


NLC/ NLCI ORGANIZATION

NLC's organizational structure is designed to strengthen and improve the staff's ability to carry out the NLC mission on behalf of local governments. The structure is mission-driven, directly responsive to member needs, and built on the skills of the NLC staff. The following sections provide brief descriptions of NLC's Centers and Offices.

CENTER FOR POLICY AND FEDERAL RELATIONS

The Center for Policy and Federal Relations is responsible for NLC's policy development and advocacy programs on behalf of local governments. The center depends upon NLC's five standing policy committees to develop comprehensive positions on national issues directly affecting cities and towns. The center informs the membership through periodic updates on legislative issues, coverage of events in *Nation's Cities Weekly*, and a regular report to state municipal leagues.



Major ongoing programs and services provided by this center include:

- Providing staff support to the policy development process.
- Working with the policy committees and the Board of Directors to develop and implement an annual "Action Agenda" which defines the membership's legislative, policy development and program priorities.
- Coordinating NLC's national advocacy efforts by working directly with legislators and staff on Capitol Hill and facilitating testimony by NLC's leadership on key priorities.

For information on NLC's policy development process and advocacy efforts, contact the Center for Policy and Federal Relations at (202) 626-3020.

CENTER FOR MEMBER PROGRAMS

This center is responsible for developing and managing a broad range of both general and specialized service programs for NLC member municipalities and member state municipal leagues.

Major ongoing programs and services provided by this center include:

- Managing policy and program support for state municipal leagues, technical assistance to leagues, and coordination of all NLC activities with those of the state municipal leagues.
- Managing the Risk Information Sharing Consortium (NLC/RISC), which serves more than 30 intergovernmental risk pooling programs operated or sanctioned by NLC member state municipal leagues.
- Managing NLC's international programs and services.
- Providing general management supervision and other technical services under a contract arrangement for the NLC Mutual Insurance Company (NLC-MIC), which provides reinsurance for more than 20 state municipal league pooling programs.
- Developing new enterprise programs in cooperation with state municipal leagues, Public Technology, Inc. (PTI) and other public and private sector organizations.
- Overseeing the activities of NLC's constituency and member groups.

For information on NLC's current and planned member programs, contact the Center for Member Programs at (202) 626-3018.

CENTER FOR PUBLIC AFFAIRS

The mission of the Center for Public Affairs is to communicate information about NLC's institutional priorities and about developments that affect cities and towns to members, the media, the public, and other individuals and organizations concerned about and influential in municipal affairs; to strengthen municipal government performance through broad communications of information about innovative local government programs; to expand the membership base of local governments in NLC and the participation of municipal officials in NLC programs and services; and to build broad public understanding of and support for the important role of local government and its leaders.

CENTER FOR EDUCATION AND INFORMATION RESOURCES

Major programs and services provided by this center include:

- Planning, publishing and disseminating *Nation's Cities Weekly*.
- Preparing news releases, press advisories, and other materials for NLC press conferences, meeting with editorial boards, and related news events.
- Planning and conducting membership recruitment and retention efforts for direct member cities and associate members.
- Planning and disseminating promotional materials relating to NLC membership, products, and services.
- Planning and conducting public education and other outreach efforts to inform citizens and opinion leaders about the importance of municipal government.
- Managing NLC's publications sales program and preparing materials about NLC's various awards programs.

For information on NLC's communications, media relations, membership and outreach programs, contact the Center for Public Affairs at (202) 626-3120.

This center develops and manages programs designed to strengthen the capacity of local officials to govern effectively and efficiently and to address emerging problems and issues successfully. The center's programs serve NLC's member cities, towns, and state municipal leagues by providing information, education and training, and technical assistance.

Major programs and services provided by this center include:

- Managing NLC's Municipal Reference Service.
- Collecting, managing, publishing, and disseminating baseline data on cities and towns over 10,000 as well as data on both elected and appointed officials in those communities.
- Developing and conducting education and training sessions on topics of interest to elected and appointed city and town officials through the activities of the Leadership Training Institute.

CENTER FOR RESEARCH AND PROGRAM DEVELOPMENT

- Publishing the *Issues & Options* subscription series.
- Developing other publications and products to provide up-to-date information on current topics affecting local government.

For information on NLC's information, education and training, and technical assistance programs, contact the Center for Education and Information Resources at (202) 626-3181.

The primary functions of this center are to develop, conduct, and report research on programs and issues of importance to cities and towns and to NLC; to explore the "futures" of America's cities and towns, identify emerging priority concerns, and develop ways for NLC to assist city officials in addressing those concerns; to lead, coordinate, and support efforts to develop, obtain funding for, and manage new programs and services for NLC members; and to manage funded projects so that they lead to increased NLC capacity to carry out its mission.

Major program priorities carried out by this center include:

- Conducting and producing surveys.
- Providing staff support to the NLC Advisory Council whose mission is to carry out a "futures" function for NLC.
- Conducting the project on Urban Poverty and Economic Development.
- Carrying out the project on Children and Families in Cities.
- Producing the annual Economic Report to the NLC Board of Directors.
- Developing and carrying out new programs, based on foundation or other outside funding, that address the needs of cities and towns.

For information on NLC's research, futures, and new program development activities, contact the Center for Research and Program Development at (202) 626-3030.

ORGANIZATIONAL SUPPORT

NLC has four offices that provide organizational support to the centers that work directly with NLC's members.

The Office of Conference Planning and Management is responsible for managing all aspects of NLC's two annual conferences, including site selection and scheduling, program planning, staff coordination, marketing, and all on-site management at both events.



The Congressional City Conference, the League's annual legislative meeting, is held in March and brings some 3,000 local officials from all over the country to Washington to hear from, and talk to, members of Congress, agency executives and their key staff people who write and administer the laws and regulations that affect cities. In the fall, just after Thanksgiving, NLC holds its annual meeting, the Congress of Cities. At this meeting the delegates elect the next year's Officers and Board members and adopt amendments to the National Municipal Policy. Along with the annual business meeting, the Congress of Cities includes a full schedule

of workshops and seminars and an exposition of new products and services for municipal governments.

The Office of Financial Management is responsible for providing a full range of financial services to the organization, including monitoring implementation of NLC's annual operating budget and providing regular reports to the Executive Director and the Board of Directors through its Finance Committee, maintaining payable and receivable accounts and related financial records, generating the payroll, investing idle funds, and monitoring the NLC Building Fund and preparing reports on fund activity.

The Office of Human Resources is responsible for planning, developing, and implementing policies, procedures, and programs in the areas of employment, benefits,

NATIONAL LEAGUE OF CITIES INSTITUTE

compensation, employee relations, and staff training and development for the organization.

The Office of Administration provides organizational support in the areas of facilities management, purchasing and procurement, central storage, computer and information systems, and leasehold management.

The National League of Cities Institute, a non-profit corporation exempt from taxes under section 501(c)(3) of the Internal Revenue Code, was created by the National League of Cities in 1958 and incorporated under the laws of the state of Delaware. The primary purposes of this non-profit corporation are to conduct research in areas of urban and rural concern in order to provide instruction and training to municipal officials; provide information that will assist municipal officials address day-to-day problems and long-range policy issues; conduct workshops to enhance the

capacity of local officials to serve their constituencies; and serve as the contracting and grant recipient for NLC.

The Institute is governed by a board of directors consisting of the NLC officers and board members, and the executive director of NLC serves as the president of the Institute. Gifts and bequests to the Institute are tax-deductible.





CHAPTER 4

NLC HISTORY

NLC HISTORY

The National League of Cities began in 1924 as an organization of state municipal leagues devoted to exchanging information on state-local issues. But in the years since its founding, NLC's mission has been broadened, and today the organization is in the forefront of action on issues affecting all communities — urban, suburban and rural.



In 1947, while it was still known as the American Municipal Association, the organization began allowing individual cities to become direct members along with state municipal leagues, and in 1948 it moved strongly into the area of public policy and began work on its first national municipal policy. That effort gave the organization a direction and purpose that has guided it ever since.

NLC has played an important role in shaping federal legislation and policies affecting local governments. In the 1950s, the association was deeply involved in the interstate highway program and in helping solve the intergovernmental expansion brought by the New Deal; in 1959 the association initiated and supported legislation that created the Advisory Commission on

Intergovernmental Relations, and the association was instrumental in the passage of legislation that dealt with the 1958-1959 recession.

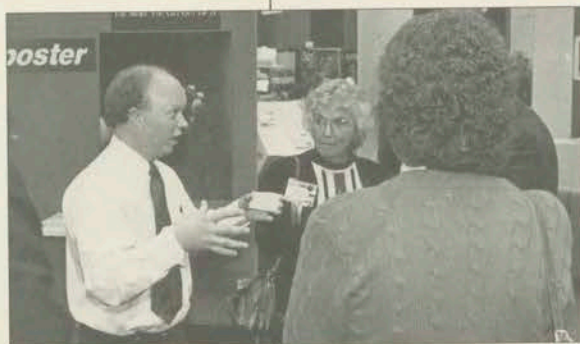
During the 1960s the association's committees anticipated a number of issues that would confront municipal government in a period of urban and social unrest. In 1964 the American Municipal Association became the National League of Cities — a move that more clearly stated the organization's interests and its membership.

By the end of the 1960s, federal programs for cities and towns had become an often confusing patchwork of regulation and requirements that made it difficult for local officials to solve local problems according to local priorities. NLC's response was to lead a coalition of other organizations in the push for General Revenue Sharing, a new approach to federal urban assistance designed to streamline the flow of aid and give local officials more control and clearer local priorities.

"Cities large or small will continue to serve as defining hubs of civilization"

During the 70's the League pushed hard for the enactment of other block grant programs for community development, employment and training, and law enforcement. And NLC was active in drafting legislation dealing with the newest problems of an industrial nation—air and water pollution—and in advocating municipal interests before the Supreme Court in the landmark *NLC v. Usery* case. In 1977, NLC opened direct membership to communities of all sizes.

The federal policies of disinvestment in America's cities and towns that marked the decade of the 1980's challenged local governments to be more innovative, creative and efficient. Despite the loss of General Revenue Sharing, reductions in or eliminations of local block grant programs, and a flurry of unfunded federal and state mandates, municipal leaders formed partnerships, implemented cost-saving solutions and made the difficult decisions that ensured delivery of services at a reasonable cost. Rear guard actions continued to be fought with the national government over important municipal priorities.



Issues of federalism and the responsibility of governments have posed a significant challenge to how municipal officials develop public policy options for the 1990's and beyond. In recent years, issues like solid waste disposal, job creation, public safety, transportation, federal and state mandates and economic development have remained as important as they always have been.

However, new issues like the globalization of markets, the suburban "edge city" ascendancy and initiatives to "reinvent" government have come more aggressively to the surface. The identity and even the definitions previously applied to cities are undergoing a metamorphosis.

While the issues change over time, some things remain constant. Throughout history, and in America today, cities have been the focus of society's capital, labor, culture, government and thought. Cities large or small will continue to serve as defining hubs of our civilization. They are our primary medium for instituting change, organizing our lives, and giving a place to our hopes.

Local governments are confronting dramatic changes and challenges. The National League of Cities will continue its leading role as an organization of municipal governments acting to improve the quality of life for the citizens of hometown America.



We hope that this short handbook gives you a better understanding of how your organization works and how you can participate in it more effectively.

What you get out of the National League of Cities will depend on what you put into it. But whatever type of involvement you choose — whether it is serving on a policy committee, attending a seminar, running for the Board of Directors, or simply reading *Nation's Cities Weekly* — your active participation in the National League of Cities is essential to insure a strong and growing organization in the future.



CALENDAR OF NLC ACTIVITIES

JANUARY

- NLC Officers Meeting
- Steering Committee Officers Appointed

FEBRUARY

- Registration Deadline for Congressional-City Conference
- Policy Committee and Steering Committee Members Appointed

MARCH

- Congressional City Conference
- Board of Directors Meeting
- Adoption of Annual Action Agenda
- Advisory Council "Futures" Meeting
- Steering Committee, Policy Committee, and Constituency Group Meetings

APRIL

- Special regional / national conferences

MAY

- Steering Committee Meetings
- Special regional / national conferences

JUNE

- Advisory Council "Futures" Meeting
- Steering Committee Meetings
- Special regional / national conferences

JULY

- Board of Directors Meeting
- State Municipal League Directors Meeting

AUGUST

- NLC Leadership Summit
- Special regional / national conferences

SEPTEMBER

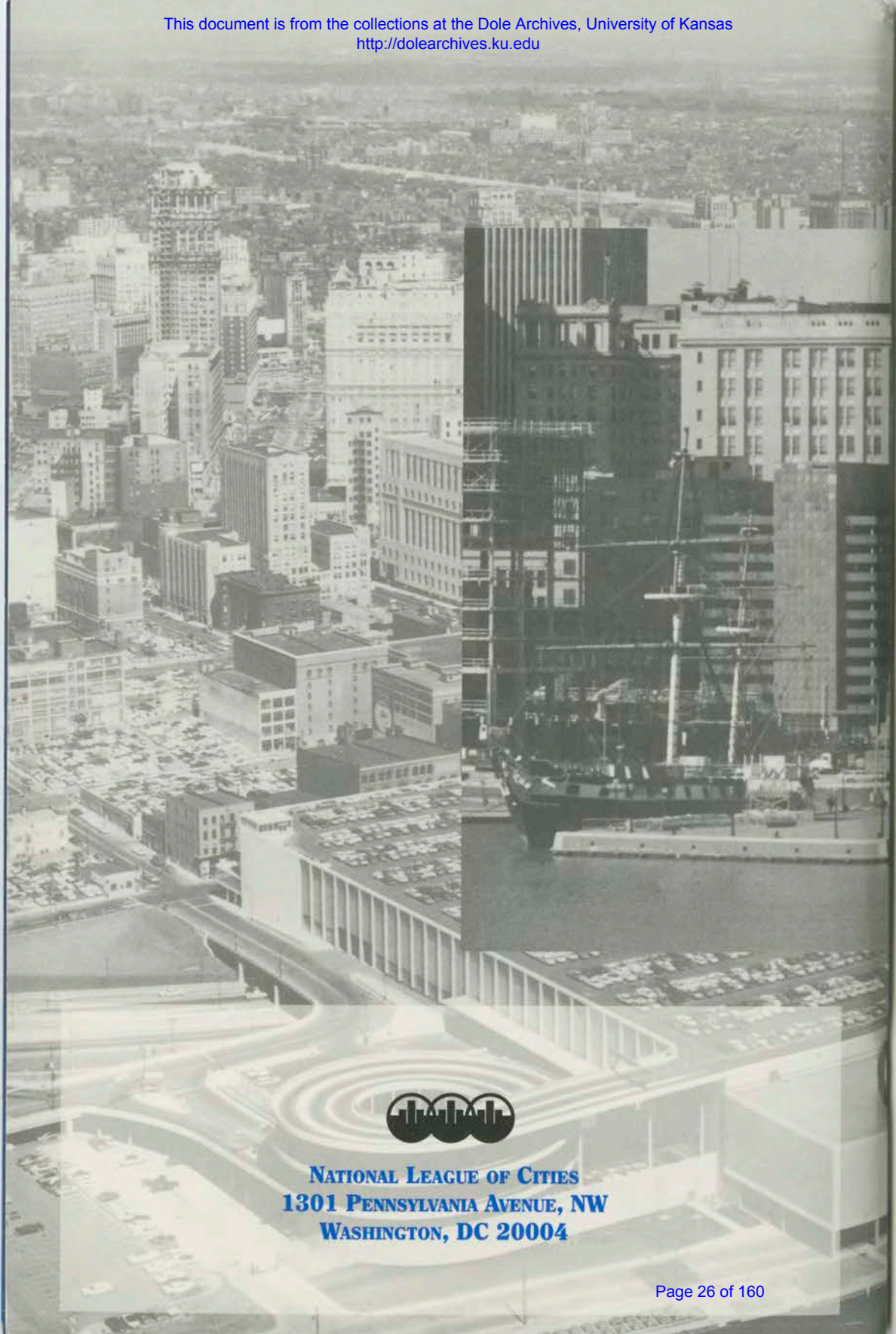
- Steering Committee Meetings
- Special regional / national conferences

OCTOBER

- Registration deadline for Congress of Cities
- Deadline for changes in policy committee membership
- Deadline for advance submission of National Municipal Policy Amendments and resolutions
- Resolutions Committee appointed
- Nominations Committee appointed
- Voting delegates and alternates appointed

NOVEMBER / DECEMBER

- Annual Congress of Cities
- Board of Directors meeting
- Policy Committee meetings
- Resolution Committee meeting
- Nominating Committee Hearing
- Annual Business
- Election of Officers
- Adoption of National Municipal Policy
- Release of Annual "Futures Report"
- Constituency group meetings
- Nominations for Committee Officers and Members



NATIONAL LEAGUE OF CITIES
1301 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004



NATIONAL CONFERENCE OF STATE LEGISLATURES

1560 BROADWAY, SUITE 700, DENVER, CO 80202-5140
(303) 830-2200 FAX (303) 863-8003

2/22/95

Dear Mr. Vachon —

Enclosed, please find the materials you requested.

If you require additional material, please feel free to call me.

In the meantime, I am looking in to the Curb Cuts Progress of States — if I can get any info., I will call you.

Regards,

Siobhán Sullivan

Trying to Comply with the ADA

Legislatures are looking for affordable ways to comply with the sweeping new Americans with Disabilities Act.

Louise Bauer

Approximately one out of six Americans has some type of physical or mental disability that substantially limits one or more major life activities. From AIDS to schizophrenia to Down syndrome to vision and hearing loss, these impairments, potentially, can touch anyone. No matter from what ethnic background or social class, no one is immune from the stigma, prejudice and isolation often experienced by people with disabilities.

As the population grows older, the current estimate of 43 million people with some sort of impairment is expected to swell. They will face discrimination from blatant and intentional isolation because of architectural, transportation and communication barriers, and from more subtle restrictions in the job market because of exclusionary qualifications and criteria.

Intended to head this off is the Americans with Disabilities Act, passed by nearly unanimous congressional vote and signed by President Bush on July 26, 1990. Some experts say the ADA is the most progressive and aggressive piece of legislation passed since the Civil Rights Act in 1964. Others believe it is the most costly piece of legislation for government and businesses ever to hit this country.

The act is a sweeping piece of civil rights legislation, intended to provide a "clear and comprehensive national mandate for the elimination of

discrimination against individuals with disabilities" in all facets of society. The ADA, which applies to nearly everyone, mandates access to the neighborhood ice cream shop, to employment opportunities at Boeing, to public transportation to Neiman Marcus, and to all aspects of the legislative process. Title I of the act intends to eliminate job discrimination and applies to state and local governments and state legislatures as employers.

What does all this mean for state legislators? As employers and public servants they must comply with the ADA. A number of state legislatures, including Arkansas, Arizona, Colorado, Delaware, Illinois, Maryland, Michigan, Missouri, Montana, Nebraska, New Mexico, New York, South Dakota, Texas, Utah, Vermont, Wisconsin and Wyoming, have already moved to appropriate funds to carry out ADA mandates, to review current statutes for conflicts with the act, and to clarify specific requirements and obligations.

In order to live up to the law, employers, including state agencies, are scrambling to eliminate discriminatory and exclusionary requirements from job descriptions and clearly define the "essential functions" of each job. For example, a job description may stipulate that an applicant "must possess" a valid driver's license although no driving may be involved with the job. This requirement automatically eliminates people who are blind or have epilepsy. Requiring a high school diploma seems a safe, nondiscriminatory criterion for a job applicant, yet it may discriminate

against people with a learning disability. Requiring a high school diploma for a shipping clerk position could exclude people who may possess the skills necessary to do the job: Nearly 40 percent of all adults with disabilities have not completed high school. Questions like "Do you have any physical condition which will limit your ability to perform this job?" are illegal under the new ADA. A major objective of the ADA is to retool society's thinking and to focus on abilities rather than disabilities. Under the ADA it is the potential employee's responsibility to inform the employer of necessary accommodations.

Access to the Legislature

Title II stipulates that "no individual shall be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity because of a disability." This could require modifications to ensure access to state buildings, programs and services. At first glance, this appears to be a tall order. However, many state buildings and local programs have been accessible for several years. Under section 504 of the Rehabilitation Act of 1973 any state program or facility supported by federal funds is required to be accessible to the handicapped.

When complying with ADA requirements, the keys are flexibility, a good faith effort and preventing exclusion, says the Department of Justice. Legislators with inaccessible district offices, for example, need to be flexible and "modify practices" for their constituents with disabilities. That could mean meeting a person with special needs at an accessible restaurant or other facility.

What exactly does access to the legislative process mean? It means providing appropriate auxiliary aids and services to ensure effective communication.

Louise Bauer covers health issues for NCSL and staffs the Task Force on Developmental Disabilities.

This may include providing sign language interpreters for legislative hearings or television monitors with captioning, it may mean bills in braille, or bills recorded on audio tape, it may mean bills that are printed in 14-point type. Access to the legislative process requires entry to the Capitol and to every aspect of the legislative process that is now open to the public.

The legislature will not be required to provide sign language interpreters every day all day for every legislative hearing, according to the Department of Justice. But if given reasonable notice, (the Department of Justice informed the Utah Legislature that depending on circumstances, 72 hours was reasonable notice) it is the legislature's responsibility to provide an interpreter at the state's expense if a person with a hearing impairment requests one. The act also stipulates that an interpreter must be a "qualified interpreter," but fails to spell out specifically what constitutes qualified. Is a qualified interpreter state certified? Or will a particular level of skill suffice? Who determines what that level of skill will be? Will formal training be necessary or can an individual who has grown up communicating in sign language meet the "qualified interpreter" criteria? Unless a state already has a mechanism to determine what a qualified interpreter is, legislation or statute may be necessary.

Assistance Is Available

Where can a state legislature get help? In addition to the various disability and advocacy groups located throughout a state, "a critical component of ADA implementation is communication with people with disabilities," says Denise Rozell, associate director of the National Association of Developmental Disabilities Councils. "People with disabilities want to make this work for everyone." The Department of Justice, Equal Employment Opportunities Commission, Architectural and Transportation Barriers Compliance Board and Department of Transportation and other federal agencies are supporting ADA technical assistance. They provide information via recorded telephone messages, audiovisual materials, pamphlets, manuals, electronic bulletin boards, checklists and training. The law requires this technical assistance for people who are protected by the ADA

and those who need to comply with it.

A technical assistance manual on Title II is available from Department of Justice offices and 10 ADA Technical Assistance Centers. The centers are funded by the National Institute of Disability and Rehabilitation Research and are set up by region to provide information to employers, agencies and people with disabilities. The manual highlights key components to consider when developing the criteria for a "qualified interpreter." Attention needs to be given to the different sign languages in use. As is the case with a foreign language, an interpreter needs to be able to communicate with both the deaf person and the hearing person colloquially as well as formally.

A training video on the Title II and Title III regulations will soon to be available from the American Speech-Language-Hearing Association. Jo Williams, director of the project, urges legislators to have Telecommunication Device for the Deaf (TDD) equipment available in state offices so constituents with hearing impairments can contact them by telephone.

Not Much Help for Legislatures

So far, specific questions asked by legislatures aren't being answered by the technical assistance available. The Utah Legislature, for instance, wanted to know if every piece of legislation needs to be available in an alternative format. The answer is no, but that legislation needs to be available in alternative formats when they are requested. Utah now knows the answer, officials say, but it took a super sleuth to find it.

Federal sources aren't up to speed on answering these kinds of questions that are particular to legislatures. Most federal funding for technical help on Title II of the act is going to organizations such as the National Center for Law and the Deaf and the American Speech, Language and Hearing Association. Their assistance is usually superficial, merely describing the act and explaining only the rules and regulations. Legislatures need more specific answers.

When a legislature wrestles with the state's budget and is rationing appropriations for various programs and staff, is it required, for instance, to fund a full-time reader for a county prosecutor who is blind? The prosecutor needs someone to interpret and translate every written

court document in addition to "reading" facial expressions of witnesses and jury members. Is this considered "reasonable accommodation" or does it cross the boundary into "undue hardship"? According to Janet Blizard of the Department of Justice, this example "usually is not an undue hardship, depending on circumstances." She says the "ADA is intended to be real flexible" and advises states to consider the "specific situation" and the "resources available" when looking at the reasonable accommodations criteria.

The question remains. In this time of extremely tight budget constraints, how many employees that require that level of accommodation can a state support?

To be in compliance and to be able to afford it, states need to be creative and resourceful. For example, reviewing the prosecutor's position to evaluate whether that level of assistance is absolutely necessary is one option. Analyzing available resources within a program may present another solution. There may already be a full-time employee willing and able to provide the necessary assistance. Allan Bergman of United Cerebral Palsy Associations believes these kinds of employment issues need to be evaluated and considered on a case-by-case basis. The ADA does not provide a "cookbook" offering recipes for success.

Legislatures Can Be Sued

If a legislature does not comply with the ADA, it can be sued. Private parties may bring lawsuits against the state in district court or file a formal complaint with an appropriate federal agency to enforce their rights. In addition to the Department of Justice, seven federal agencies have been designated to handle complaints filed under Title II. A complaint may also be filed with any federal agency that provides financial assistance to the alleged violator, and the fine for a violation can be stiff. Under Title II of the ADA, the remedy allows for corrective action and compensatory damages only.

Jim DeJong, ADA project coordinator for the Technical Assistance Center in Region VII, which includes Missouri, Nebraska, Kansas and Iowa, says legislatures can minimize their chances of being sued. Being aware of the whole picture when you implement the act will help minimize costly mistakes and

reduce risk of litigation, he says. Public meetings, hearings or social functions sponsored by the legislature must be held at accessible locations. Current policies, like hiring practices, need to be reviewed. DeJong also suggest that legislatures exhibit a "valiant effort to come into compliance" and to "create good faith efforts" through appropriations, transition plans and self evaluation, all required of states by ADA.

"Document every dollar your state spends on ADA compliance," advises DeJong, it could be your best insurance policy in case you find yourself entangled in litigation.

Deciding Who's in Charge

Jim DeJong advises states to choose their ADA compliance coordinator with care. It should be a person with some recognized authority and personal clout, he says. Some of the largest stumbling blocks to implementing the law are caused because no one's in charge, he said.

In Nebraska, for example, the fire marshall is responsible for enforcing the state's building code. But when dealing with ADA accessibility, the fire marshall is not responsible for reviewing building plans to make sure a building is in compliance. Nebraska is still struggling with this issue of jurisdiction and authority. Currently no one is held accountable for enforcement or noncompliance of the ADA.

In Colorado, the governor has developed a "cabinet council" to oversee ADA compliance and consistency. Serving are executive directors from several state agencies, members of the executive branch and individuals from the disability community. So far, the council's responsibilities, jurisdiction and scope of authority have yet to be determined.

Initial Costs Will Be High

ADA implementation will not be cheap. The Budget on Human Services Committee in North Dakota has attached an estimated \$4.2 million price tag to the architectural barriers mandate of the ADA. During the 1992 session, the Missouri legislature appropriated \$500,000 to implement the ADA and is looking at a request for \$2.5 million in 1993. Currently no one has a handle on the cost of actual implementation. Under tight fiscal constraints, appropriations and budget committees will need

to be sensitive to their fiscal responsibilities and obligations regarding the ADA. Legislatures are wondering how much is enough. No telling. Lawmakers can probably safely guess that initial costs will be high. However, once capital investments are made, additional expenses incurred for the ADA should be nominal.

Key Points of the Americans with Disabilities Act

The Americans with Disabilities Act is intended to bring people with mental and physical impairments into the economic and social mainstream of American life. It prohibits discrimination in the areas of employment, in state and local government services, in public accommodations and in telecommunications.

A person is considered to have a disability if he or she has a physical or mental impairment that substantially limits one or more of the major life activities (basic activities that the average person in the general population can perform with little or no difficulty); has a record of such an impairment; or is regarded as having such an impairment.

TITLE I (Employment)

It is unlawful to discriminate in employment practices against an individual with a disability who is qualified to "perform the essential functions of the job," with or without reasonable accommodation. It means that:

- An individual must be able to perform fundamental job duties unaided or with reasonable accommodation in order to be considered qualified for the job.
- The employer must provide any modification or adjustment in the work environment or in the way things are customarily done that would enable an individual with a disability to do the job. A reasonable accommodation need only be made to the physical or mental limitations of a qualified individual with a disability that is known to the employer.
- The employer will not be required to make an accommodation or provision that is significantly difficult or is prohibitively expensive.

TITLE II (Public Services)

Public entities may not exclude a qualified individual with a disability (who meets the essential eligibility requirements for services) from participating in or receiving benefits of their services, programs or activities. Under Title II:

- Public organizations are not required to take any action that results in an alteration in the nature of a service, program, or activity or causes undue financial and administrative burdens.

- All public entities must evaluate their services, policies and practices that do not or may not meet the requirements of Title II.
- Public organizations must comply with Title I if subject to its jurisdiction. If not, they must comply with the employment requirements of section 504 of the Rehabilitation Act of 1973.
- A public entity that employs 50 or more people must appoint at least one employee to coordinate compliance, including investigation and resolution of complaints.

Title III (Public Accommodations and Services Operated by Private Organizations)

Operators of private public places must not discriminate against people with disabilities. The disabled are entitled to full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations of any public place.

Title IV (Telecommunications)

Telecommunications services such as telephone services must be offered to hearing impaired and speech impaired individuals that are functionally equivalent to those available to hearing and speaking individuals.

Here's What States Are Doing

States are taking several different approaches to dealing with the ADA mandates. Responses range from apathy to progressive plans and activities.

Arizona: Passed an emergency measure last session to make Arizona statutes conform to the federal ADA.

Florida: Installed Telecommunication Device for the Deaf (TDD) equipment in the Senate secretary, House sergeant and Public Council offices.

Iowa: Installed a computer system for tracking legislation in an accessible location for the public.

Louisiana: Conducted a meeting on ADA requirements for elected officials, state agency department heads, legislative leadership and the judicial administrator.

Maine: The executive director of the Legislative Council, clerk of the House and secretary of the Senate discussed with other state agencies options for providing legislation in alternative formats.

Minnesota: Passed a Human Rights Law more stringent than the ADA, before ADA was passed.

Montana: Contracted with the Montana Independent Living Project to survey the accessibility of the State Capitol.

North Dakota: Named the legislature's Budget Committee on Human Services as an oversight group responsible for delivering recommendations to the legislature and assessing the fiscal impact of the act.

Texas: Restructured the Governor's Committee on People with Disabilities to provide guidelines and monitor ADA compliance.

Utah: The Legislature joined forces with the Center for Deaf to write a bill that will define "qualified interpreter."

West Virginia: Created the legislative Handicap Access Subcommittee to evaluate the accessibility of the Capitol and issue recommendations to the Legislature.

Wyoming: Contracted with the Department of Vocational Rehabilitation and the Department of Education for sign language interpreters for the Legislature.

state in district court or file a formal complaint with an appropriate federal agency to enforce their rights. In addition to the Department of Justice, seven federal agencies have been designated to handle complaints filed under Title II. A complaint may also be filed with any federal agency that provides financial assistance to the alleged violator, and the fine for a violation can be stiff. Under Title II of the ADA, the remedy allows for corrective action and compensatory damages only.

Implementation of the ADA will not be cheap. The Budget on Human Services Committee in **NORTH DAKOTA** has attached an estimated \$4.2 million price tag to the architectural barriers mandate of the ADA. In **WASHINGTON**, Governor Mike Lowry proposed appropriating \$12 million for capital expenditures and an additional \$2 million for operating expenses. In **NEBRASKA**, both the Legislature and the governor have recommended appropriating \$1 million for each of the next two fiscal years. These appropriations would bring only the "most urgent" buildings into compliance. Currently no one has a handle on the cost of actual implementation. Lawmakers can safely guess that initial costs will be high. However, once capital investments are made, additional expenses incurred for the ADA should be nominal.

*Legislatures
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*Initial costs
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Key Points of the ADA

❖ TITLE I (Employment)

It is unlawful to discriminate in employment against anyone with a disability who is qualified to "perform the essential functions of the job."

❖ TITLE II (Public Services)

Public entities may not exclude a qualified individual with a disability (who meets the essential eligibility requirements for services) from participating in or receiving benefits of their services, programs or activities.

❖ TITLE III (Public Accommodations and Services Operated by Private Organizations)

Private operators of public places may not discriminate against people with disabilities. The disabled are entitled to full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations of any public place.

❖ TITLE IV (Telecommunications)

Telecommunications services, such as telephone services, that are functionally equivalent to those available to hearing and speaking people must be offered to hearing impaired and speech impaired individuals.

Selected References

Bauer, Louise. "Trying to Comply with the ADA." *State Legislatures* 19, no. 1 (January 1993): 40-45.

Title II Highlights: The Americans with Disabilities Act. Washington, D.C.: U.S. Department of Justice, Civil Rights Division, Office on the Americans with Disabilities Act.

Title II Technical Assistance Manual: The Americans with Disabilities Act. Washington, D.C.: U.S. Department of Justice, Civil Rights Division, Office on the Americans with Disabilities Act, 1992.

Contact for More Information

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(303) 830-2200



NCSL · LEGISBRIEF

July 1993

Vol. 1, No. 28

AMERICANS WITH DISABILITIES ACT

By Louise M. Bauer

The ADA is a sweeping piece of civil rights legislation.

The ADA requires access to the legislature.

Background

Approximately one out of six Americans has some type of physical or mental disability that substantially limits one or more major life activities. Disabilities range from AIDS to schizophrenia to Down syndrome to vision or hearing loss. No matter from what ethnic background or social class, no one is immune from the stigma, prejudice and isolation often experienced by people with disabilities.

The Americans with Disabilities Act—signed by President Bush on July 26, 1990—is intended to bring people with mental and physical impairments into the economic and social mainstream of American life. It prohibits discrimination in the areas of employment, in state and local government services, in public accommodations and in telecommunications.

Title II of the ADA, which applies to state legislatures, stipulates that “no individual shall be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity because of a disability.” This could require modifications to ensure access to state buildings, programs and services. At first glance, this appears to be a tall order. However, many state buildings and local programs have been accessible for a number of years. Under Section 504 of the Rehabilitation Act of 1973 any state program or facility supported by federal funds must be accessible to people with disabilities.

What exactly does access to the legislative process mean? It means providing whatever is needed to ensure effective communication. This may include providing sign language interpreters for legislative hearings or television monitors with captioning; it may mean bills in braille, or bills recorded on audio tape; it may mean bills that are printed in 14-point type. Access to the legislative process requires entry to the Capitol and to every aspect of the legislative process that is now open to the public.

The legislature will not be required to provide sign language interpreters every day all day for every legislative hearing, according to the Department of Justice. But if given “reasonable notice” (the Department of Justice informed the UTAH Legislature that depending on circumstances, 72 hours was reasonable notice), it is the legislature’s responsibility to provide an interpreter at the state’s expense if a person with a hearing impairment requests one.

State Actions

The NEW JERSEY Legislature developed an informational brochure for its state Capitol visitors with disabilities. NORTH DAKOTA named the legislature’s Budget Committee on Human Services as an oversight group responsible for delivering recommendations to the legislature and assessing the fiscal impact of the act. The TEXAS Legislature hired two full-time interpreters to assist the hearing impaired. Legislative staff in MINNESOTA developed a manual that summarizes guidelines on the ADA for members and staff. ARIZONA passed an emergency measure last session to make Arizona statutes conform to the ADA. MONTANA contracted with the Montana Independent Living Project to survey the accessibility of the state Capitol.

If a legislature does not comply with the ADA, private individuals may bring lawsuits against the

NATIONAL
CONFERENCE
OF STATE
LEGISLATURES

Executive Director, William T. Pound

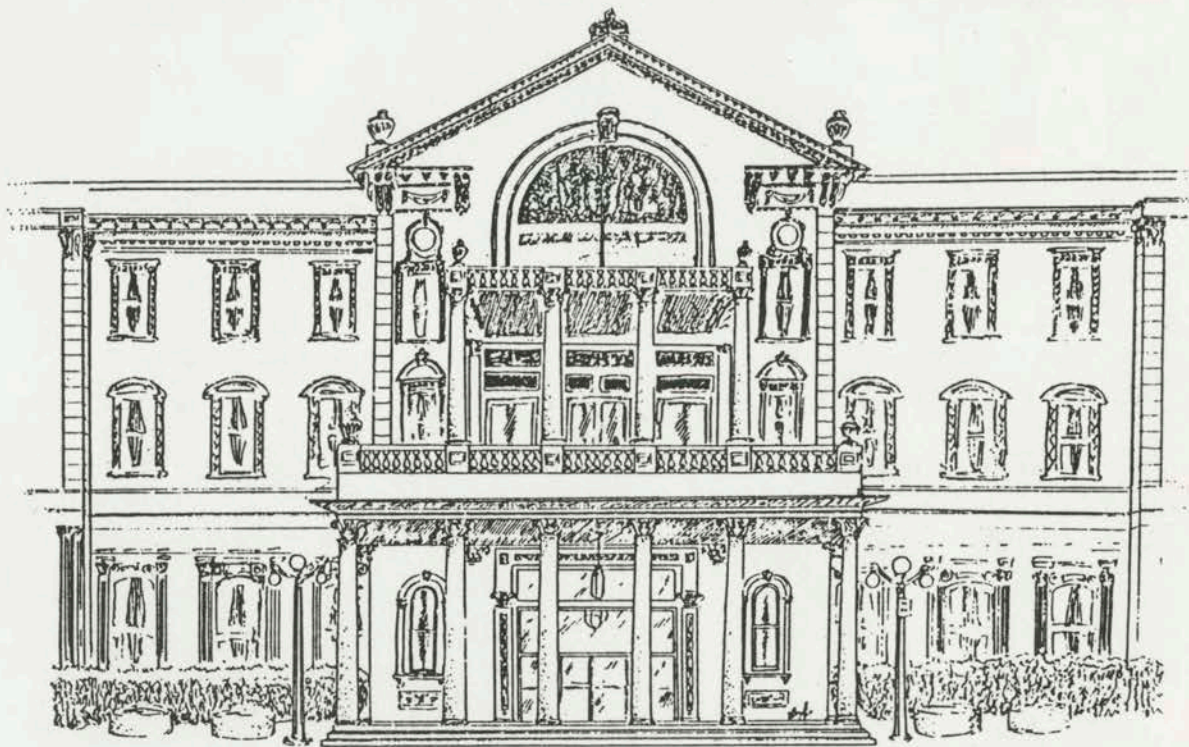
Copyright National Conference
of State Legislatures

Denver Office: 1560 Broadway
Suite 700
Denver, Colorado 80202
303.830.2200

Washington Office: 444 N. Capitol St., N.W.,
Suite 515
Washington D.C. 20001
202.624.5400

The New Jersey State House

INFORMATION FOR VISITORS WITH DISABILITIES



New Jersey's State House is the second-oldest capitol in continuous use in the United States. (Only Maryland's State House is older.) Since the original structure was built in 1792, numerous additions and modifications have been made, which can confuse visitors trying to navigate through the building.

A major challenge during the recent restoration/renovation of the legislative quarters of the State House was to make this historic structure meet Barrier Free Access sub-code requirements. In the instances where a waiver was granted due to the building's historic status (such as the public galleries of both legislative chambers), alternate arrangements have been made to ensure access for every citizen.

This publication is intended to assist visitors with disabilities. Please note that references to the Legislative State House pertain to the portion of the building behind the rotunda. The front part of the building is considered the Executive State House.

ACCESS AND FACILITIES

Parking – Handicapped spaces are available in the Capitol Complex parking lot behind the building, and on West State Street. (Refer to overview map on back.)

Entrances – The West State Street entrance to the State House has two exterior handicapped-accessible ramps and is equipped with an automatic door. The east-side grade level entrance has an interior ramp. While not automatic, the door meets the Barrier Free Access subcode opening-force requirement. South Addition entrance doors meet these requirements also.

Elevators – While both elevators in the Legislative State House are handicapped accessible, the one noted for handicapped use stops at Level B and avoids the four steps that separate Level B from B1. Please note that this elevator is not reserved solely for people with disabilities. Two additional elevators are located in the Executive State House, along the main corridor on opposite sides of the rotunda. Only the one behind the rotunda services legislative offices on Level 4.

Legislative Activity – On session days, sergeants-at-arms of both Houses are required to grant visitors using wheelchairs access to the chamber floors through the first floor main entrances (at the rear of each chamber). The Senate President and Assembly Speaker's offices on the 2nd floor of the Legislative State House are accessible by key-operated platform lifts. The keys to both lifts may be obtained from the Assembly Clerk's office in Room L214. (Refer to locator map.)

Rest Rooms – Floors A, B1, 1, 2, and 3 in the Legislative State House have public rest rooms that are accessible to individuals with disabilities, including wheelchair users. (Refer to locator map.)

Public Telephones – Wheelchair-accessible phones are available in the main corridor of Level A in the South Addition and in the Legislative State House to the east of the elevator bank on Levels 1, 2 and 3. (Refer to locator map.)

Tours – Public tours of the State House may be reserved by calling the Office of Legislative Services, Office of Public Information at (609) 292-4661. Please indicate if you or anyone in your group has any special needs. While the public galleries are not wheelchair accessible, arrangements will be made for the floor of both legislative chambers to be available to visitors in wheelchairs.

FLOOR OVERVIEWS

Level A: Lobby of the South Addition, Senate Majority and Assembly Minority staff offices, Legislative Services information/reception desk, State Police guard station.

Level B1: Assembly Majority and Senate Minority staff offices, Assembly Majority Conference Room.

Level B: Legislative State House: Minority Conference Rooms, Newsstand, Executive State House: Legislative Information Service, Legislative Bill Room, State Police.

Level 1: Legislative State House: Legislative Chambers-floor level, Period Rooms, Senate and Assembly Majority and Minority Leaders, Senate Secretary, Executive State House: Governor, State Treasurer, Secretary of State, Nurse's Station, State Police.

Level 2: Legislative State House: Public Galleries, Senate Majority Conference Room, Senate President, Assembly Speaker and Assembly Clerk, Coat Room, Public Lounge, Coin-operated photocopier, Executive State House: Press offices.

Level 3: Legislative State House: Exhibit Space, Joint Conference Room (Room 319).

Level 4: Executive State House: Office of Legislative Services' Executive Director, Legislative Counsel and Office of Public Information.

HEARING IMPAIRED INFORMATION

Public Telephones – All public telephones in the Legislative State House are equipped with a volume control to accommodate persons with hearing impairments.

Legislative Information – TDD Hotline/ Call (toll free in NJ) (800) 257-7490, or (609) 777-2744. The Office of Legislative Services' Legislative Information Service, offers news of legislative activity and action, status of bills, legislative calendar, explanations of legislative procedures, and listings of legislative members, districts and committee membership.

THE LEGISLATIVE OFFICE BUILDING (LOB)

Due to the renovation of the State House Annex, legislative committee meeting rooms and much of the staff of the Office of Legislative Services are temporarily located in the Legislative Office Building, at 135 West Hanover Street. The committee rooms are located in the basement, and on the first and second floors.

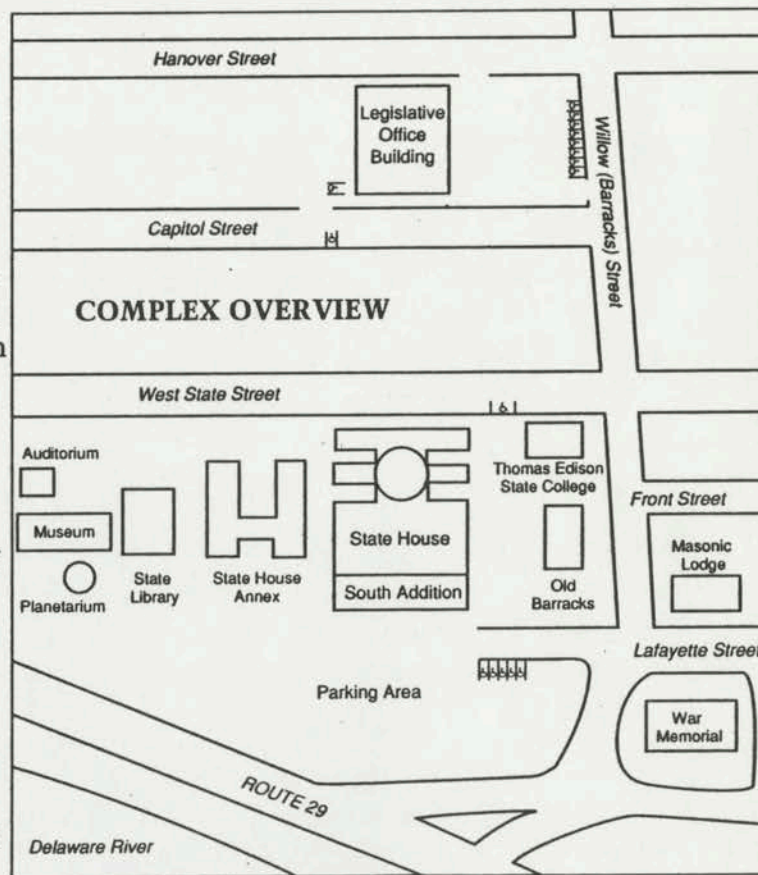
Parking and Entrance – Numerous handicapped parking spaces are located in the parking lot on the east side of the building (Area 31B). Two additional spaces are located by the building's Capitol Street entrance. This serves as the building's main entrance and is equipped with a handicapped-accessible ramp.

Elevators – There are two handicapped-accessible elevators in the building which stop at all five floors.

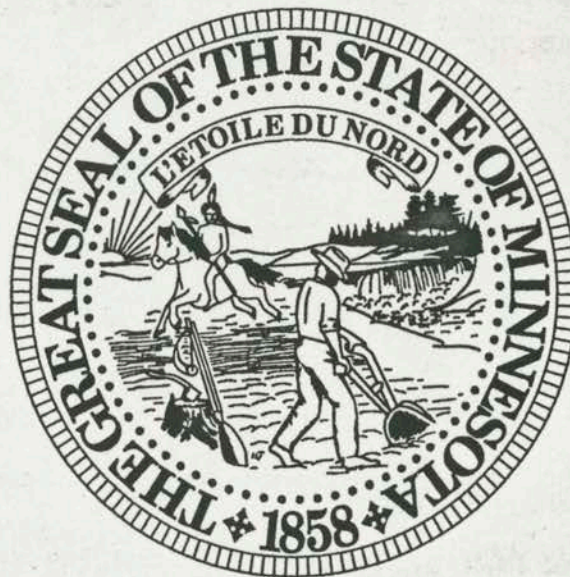
Rest Rooms – Men's and women's rest rooms alternate by floor. Except for the basement rest room, each is accessible to individuals with disabilities, including wheelchair users. Men's rest rooms are on the second and fourth floors; women's are on the first and third.

Public Telephones – Wheelchair-accessible phones are located in the basement lobby and in the second floor corridor. These phones have a volume control device.

Additional Assistance – For further information, or special needs, contact the Administrative Unit of the Office of Legislative Services at (609) 292-1338.



Prepared by the Office of Legislative Services, Office of Public Information, State House, CN-068, Trenton, NJ 08625-0068. Legislative Information Service: (toll free in NJ) (800) 792-8630, or (609) 292-4840



Minnesota Legislature

Assistance for persons with special needs

The Minnesota Legislature is committed to making the legislative process open and available to everyone, including persons with special needs. Toward that end, the Legislature has initiated a number of services designed to enable individuals with disabilities to participate in legislative activities, programs and services.



Barrier free access to public hearings

Senate and House of Representatives hearing rooms, the Senate west gallery and the House of Representatives gallery are accessible to individuals using wheelchairs. Both the Capitol Building and the State Office Building have designated parking and entrance ramps to provide easy access to the buildings. If individuals require assistance, contact the Senate Sergeant at Arms at 296-1119 for problems in the Capitol Building or the House Sergeant at Arms at 296-4860 for problems in the State Office Building.

Wheelchair

Both the Senate and House of Representatives have access to a wheelchair for the use of persons with disabilities within the Capitol or State Office Building. Advance notice is required to insure that the wheelchair is available when needed. Call the Senate Sergeant at Arms at 296-1119 for the Capitol Building or the House Sergeant at Arms at 296-4860 for the State Office Building.

Television coverage

The Senate offers live cable television coverage of selected committee hearings and daytime Senate floor sessions. Regional Cable Channel 6 carries Senate programming during the week in the Metro Area.

Services for persons who are deaf or hard of hearing

TDD service

Both the Senate and the House of Representatives have TDD (Telecommunications Device for the Deaf) services. The Senate TDD number is 296-0250 and the House TDD number is 296-9896. The TDD telecommunications service allows deaf or hard of hearing persons to communicate with the Senate Index staff and the House Information staff about bill information and legislators. The House Public Information Office also maintains a TDD 800 number for persons in Greater Minnesota. The number is 1-800-657-3550. In addition, a public access TDD pay telephone is located near the Capitol Information Desk on the first floor of the Capitol Building.

Minnesota Relay Service

The Minnesota Relay Service is a communications service that links deaf, hard of hearing, speech impaired and hearing people via the telephone. The service, which is operated by the state/telephone company, allows a person who is deaf or hard of hearing or who does not use speech to contact a relay operator via TDD. The operator then reads the TDD user's words aloud to the



voice-user and types the voice-user's words to the TDD user. Relay operators have been trained in ethics, procedure and American Sign Language grammar. The operators will pass conversations along but will not interfere or advise users. All calls are confidential. The 24 hour relay service is provided at no cost to callers. Long distance calls will be billed accordingly. The TDD/voice number for the Metro Area is 297-5353 and the number for Greater Minnesota is 1 800 657-3529.

Interpreters

In order to increase the accessibility of legislative committee hearings and floor sessions, the Senate and the House of Representatives will obtain the services of an interpreter. Again, advance notice is required. Please contact the Senate Sergeant at Arms or the House Sergeant at Arms at least 24 hours before the service is needed.

Assistive listening devices in hearing rooms, the House Chamber and the Senate Chamber


The Minnesota Senate has installed sound reinforcement systems for all major hearing rooms and the Senate Chamber in the Capitol Building. These systems are available for use in Rooms 15, 107, 112, 123, 125 and the Chamber. The system is for the exclusive use of persons who are deaf or hard of hearing. Receivers may be signed out from the Senate Sergeant at Arms, Room 1, Capitol Building, during normal business hours. The devices are available for the duration of a particular meeting and are to be returned immediately following the meeting. For meetings lasting beyond normal business hours, receivers are to be returned to the committee staff. Call the Sergeant at Arms at 296-1119 (TDD 296--0250) for further information.

In the House of Representatives, amplification devices may be checked out from the House Public Information Office, Room 175, State Office Building and the Chief Clerk's Office, Room 211, Capitol. The system is available for use in the 10 hearing rooms in the SOB and in the House Chamber. Call the House Information Office at 296-2146 (TDD 296-9896) for more information.

Services for persons who are blind or visually impaired.

Signs

Raised numbers identify legislative offices and rooms in the SOB and Capitol. In addition, Braille signs have also been installed throughout the Capitol Building and the State Office Building to assist those who are visually impaired. The elevators in both buildings are also equipped with control signs in Braille.



Large print

Some of the printed material handed out in committees may be enlarged on the copying machines used by the House and Senate. Contact personnel in the Senate Information Office, Room 231, Capitol or in the House Information Office, Room 175 State Office Building for assistance.

Readers

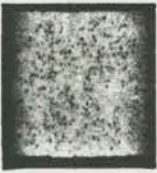
Senate and House Information Office staff will be happy to arrange for readers for printed materials. Again, advance notice is necessary to insure timely assistance. Please call 296-0504 for Senate Information or 296-2146 for House Public Information.

Cassette tapes

Every committee, commission meeting, and floor session is tape recorded. For cassette copies of a particular meeting or floor session contact the Legislative Reference Library. Cassette tapes are made available at a price sufficient to cover the costs of duplicating the tape. If an individual wishes to simply listen to the tape of a committee meeting or floor session, the Legislative Reference Library maintains a facility for listening to the tapes. It is located in Room 71 on the Ground Floor of the State Office Building. Contact the Legislative Reference Tape Library at 296-0767.

A final word

The Minnesota Legislature is committed to complying with the provisions of the Americans with Disabilities Act and supports the goal that individuals with disabilities shall not be excluded from participating in or be denied the benefits of any program, service or activity offered by the Legislature. Effective communication is a necessary step in meeting that goal. Thus, the Legislature welcomes comments and suggestions from the public on services that will improve communication between the Legislature and individuals with special needs. Please direct comments to Janet Lund, coordinator for the ADA, Legislative Coordinating Commission, Room 85, State Office Building, St. Paul, MN 55155.



January 1993



updated

DATE: October 1993

TO: All Legislators and Staff

FROM: Irv Anderson *Irv*
Speaker Designate and LCC Chair

Phil Carruthers
Phil Carruthers
House Majority Leader

Steve Sviggum
Steve Sviggum
House Minority Leader

Roger Moe
Roger Moe
Senate Majority Leader

Allan Spear
Allan Spear
President of the Senate

Dean Johnson
Dean Johnson
Senate Minority Leader

SUBJ: AMERICANS WITH DISABILITIES ACT

The Minnesota Legislature is committed to complying with the provisions of the Americans with Disabilities Act (ADA) and affirms its commitment to the goal that individuals with disabilities shall not be excluded from participating in or be denied the benefits of any program, service or activity offered by the Legislature.

It is the responsibility of legislators and legislative employees to support the goals, objectives and concept of the ADA in their dealings with the public, prospective employees, and co-workers.

Please take some time to read the attached material. If you have any questions or would like further information, please do not hesitate to contact Janet Lund, the ADA Coordinator for the Legislature.

jl
Att.

**INFORMATION AND GUIDELINES FOR MEMBERS AND STAFF
ON THE AMERICANS WITH DISABILITIES ACT (ADA)**

Minnesota Legislature
October 1993

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INFORMATION AND GUIDELINES FOR MEMBERS AND STAFF ON THE AMERICANS WITH DISABILITIES ACT (ADA) Minnesota Legislature October 1993

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What is the Americans with Disabilities Act?

The Americans with Disabilities Act, passed in 1990 and otherwise known as the ADA, is the Bill of Rights for individuals with disabilities. It is the most comprehensive federal civil rights law passed since the Civil Rights Act of 1964.

The ADA requires governments and businesses to eliminate discrimination against people with disabilities in employment and in the provision of public services. It also sets timetables for removing structural barriers that prevent people with disabilities from entering buildings or participating in public services.

What is the Legislature's Policy on the ADA?

The Minnesota Legislature is committed to complying with the provisions of the ADA and supports the goal that individuals with disabilities shall not be excluded from participating in or be denied the benefits of any program, service or activity offered by the Legislature.

The ADA requires that the Legislature communicate effectively with individuals who have speech or visual impairments or who are deaf or hard of hearing. The Legislature strives to provide auxiliary communication aids to individuals with disabilities as necessary to afford them equal opportunity to participate in or benefit from the Legislature's programs, services, or activities.

Discrimination on the basis of disability is also prohibited by the Minnesota Human Rights Act. It is the responsibility of legislators and legislative employees to support the goals, objectives and concept of the ADA and the Minnesota Human Rights Act in their dealings with the public, prospective employees, and co-workers.

MEMBER AND STAFF COMMENTS AND SUGGESTIONS IMPORTANT
<p>The Legislature is committed to improving communication between itself and people with disabilities. As members and staff, your comments and suggestions are welcome and may be directed to the ADA Coordinator (see page 12).</p>

How to Treat People with Disabilities with Respect

One of the key elements of the ADA is that members and staff make an effort to reasonably accommodate the needs of people with disabilities who use legislative programs and services. Much of this accommodation effort requires **thought and courtesy**.

If a person with disabilities needs your assistance or requests information on the legislature, its activities or services, **be sensitive and use common sense**. There is almost always some kind of accommodation that can be made to meet the need or respond to such a request.

What is the proper way to speak to or about someone who has a disability? Remember, persons with disabilities are like everyone else--except they happen to have a disability. **Be positive and use respectful terminology**.

TIPS FOR IMPROVING YOUR LANGUAGE RELATED TO DISABILITIES

1. Speak of the person first, then the disability.
2. Emphasize abilities, not limitations.
3. Do not label people as part of a disability group. Don't say "the disabled." Say "people with disabilities."
4. Don't give excessive praise or attention to a person with a disability. Don't patronize them.
5. Choice and independence are important. Let the person do or speak for him/herself as much as possible. If addressing an adult, say "Bill" instead of "Billy."
6. A **DISABILITY** is a functional limitation that interferes with a person's ability to walk, hear, talk, learn, etc. Use **HANDICAP** to describe a situation or barrier imposed by society, the environment or oneself.

How to Treat People with Disabilities with Respect (continued)

RESPECTFUL TERMINOLOGY

KEY: It's the 'Person First' - Then the Disability

SAY . . .

INSTEAD OF . . .

person	able-bodied, normal, healthy
person with a disability	the handicapped, the disabled, physically challenged, differently abled
children with disabilities	special children
person with cerebral palsy	palsied, or C.P., or spastic
person who has . . .	afflicted, suffers from, victim
person who is blind or visually impaired	blind people
person who is deaf or hard of hearing	the deaf, hearing impaired, mute, deaf and dumb
person who does not use speech, person without speech, person who communicates with sign	mute, deaf and dumb
has a learning disability	is learning disabled
medically involved, has chronic illness condition	sickly disease (unless it is a disease)
with Down Syndrome	mongoloid
developmental delay	slow
emotional disorder, mental illness	crazy, insane
person with mental impairment, person with a developmental disability	retard, retarded
congenital disability	birth defect
has a physical disability	crippled
mobility impaired	lame
person with epilepsy person with a seizure disability	epileptic
seizures	fits
cleft lip	hare lip
person who uses a wheelchair	confined to a wheelchair, wheelchair bound

How to Treat People with Disabilities with Respect (continued)

SAY...

paralyzed

person with paraplegia
(loss of functions in lower body only)

person with quadriplegia
(paralysis of both arms and legs)

person with hemiplegia
(paralysis of one side of the body)

of short stature

INSTEAD OF...

invalid, paralytic

paraplegic

quadriplegic

hemiplegic

dwarf or midget

ASSISTING PEOPLE WITH DISABILITIES

Offer assistance and treat the person who has a disability as you would anyone else; for example, to push a wheelchair or to guide a person with visual impairment. Do not be afraid to help. If you are not sure what to do, ask the person. The person will indicate whether or not the help is needed, and a "no, thank you" must be respected.

Most people will not hesitate to ask for needed help and will tell you exactly what will be helpful. For example, the person who is blind usually prefers to take your arm rather than to have you grab her or his arm.

WHEN SPEAKING TO OR MEETING A PERSON WITH ANY DISABILITY

- Make eye contact. It gives the person a non-verbal message that lets that person know that you are comfortable in his/her presence, that you are focused on the person and not the disability, and that you are extending the same courtesies you would to anyone else.
- Talk directly to the person, rather than through a companion who may be along. Never talk about a person with disabilities to the person he or she is with as if the former did not exist, including an interpreter for a person who is deaf or hard of hearing.
- Use your usual tone of voice, usual voice inflection, and usual rate of speech, unless asked to slow down.
- If it is difficult for you to understand someone who has a speech disability, you may ask them to repeat what they said and many will be willing to do so.

How to Treat People with Disabilities with Respect (continued)

- When appropriate, use gestures, sign language, or interpreters.
- Be sensitive to architectural barriers in your workplace; by law they should be removed. Be alert to the danger of objects in walkways, and do what you can to make your workstation safe and accessible.

WHEN SPEAKING TO SOMEONE WHO USES A WHEELCHAIR

- When talking for more than a few minutes, try to sit down in order to share eye level. It can spare both of you a stiff neck.
- Relax. Do not be embarrassed about using words like "walking" or "running." People who use wheelchairs use the same words.
- Never touch a wheelchair or a crutch, unless you are in a relationship where you would touch the person. Wheelchairs are an extension of personal space for people who use them.

WHEN SPEAKING TO A PERSON WHO IS DEAF OR HARD OF HEARING

- Look directly at the person and speak clearly and distinctly, but don't exaggerate. Use normal speed unless asked to slow down.
- Provide a clear view of your mouth. Some people with hearing loss lip read.
- Shouting does not help. Speak in your normal tone unless asked to speak more loudly.
- Remember that your facial expressions and gestures are important. They serve as "tone" for people who cannot hear the inflections in your voice.
- If you and the person you are speaking with have a great deal of difficulty understanding one another's speech, it's okay to write notes.

WHEN SPEAKING TO SOMEONE WITH MENTAL IMPAIRMENT

- Keep your language simple. Make concepts clear, and try to avoid complex sentences.

How to Treat People with Disabilities with Respect (continued)

- However, remember that simple language is not childish language. Adults like to be addressed as adults.
- Sometimes, people with mental impairment may be slow to respond to questions; give them time.

WHEN SPEAKING TO A PERSON WHO IS BLIND OR VISUALLY IMPAIRED

- Remember that it is not necessary to speak loudly.
- In the presence of a person with a visual impairment, speak to them. People with visual impairments can become uncomfortable if they sense that they are being observed in silence.
- It is okay to use words like "look" or "see."
- Do not pet guide dogs. They are working and must not be distracted.
- You can assume that a person who is blind using a long white cane or guide dog will let you know if assistance is needed. When offering to help guide a person with a visual impairment, allow him/her to put a hand on your arm and walk slightly behind you. When offering a seat, place the person's hand on the back or arm of the chair. These actions will help you to guide, rather than propel or lead this person.
- Use specifics such as "left a hundred feet" or "right two yards" when directing a person who is blind. But don't make directions too complicated.

WHEN INTERACTING WITH A PERSON WHO DOES NOT USE SPEECH OR IS SPEECH IMPAIRED

- Do not be afraid to ask the person to repeat him/herself, even three or four times if the person is willing to do so.
- Do not finish sentences for the person.
- Do not simplify your own speech or raise your voice to be understood. Remember that physical impairments do not indicate lack of intelligence.
- Be considerate of the extra time it might take for a person who is speech impaired to get things said. Let the person set the pace in talking. When necessary, ask short questions that require short answers or a nod or shake of the head.

What ADA Services Are Offered in the Legislature?

If you are asked about services or conditions that enable people with disabilities to participate in the activities of the Legislature:

1. Give the person a copy of Assistance for Persons with Special Needs, the Legislature's public ADA handout.

For copies of this handout, contact:

Senate

Senate Information Office
Room 231, Capitol

House

House Information Office
Room 175, State Office Building

2. Or refer to the following:

BARRIER-FREE ACCESS TO PUBLIC HEARINGS - The following rooms are accessible to people using wheelchairs:

- Hearing rooms (State Office Building and Capitol Building)
- The House gallery (Capitol Building)
- The Senate west gallery (Capitol Building)

Both buildings have **designated parking and entrance ramps** to provide easy access. If a person requires assistance, contact:

Capitol Building

Senate Sergeant-at-Arms
296-1119

State Office Building

House Sergeant-at-Arms
296-4860

WHEELCHAIRS - Both the Senate and House have access to wheelchairs for people with disabilities. Wheelchairs are available **with advance notice** (to insure that a chair is available).

Call: Capitol Building

Senate Sergeant-at-Arms
296-1119

State Office Building

House Sergeant-at-Arms
296-4860

What ADA Services are Offered in the Legislature (continued)

SERVICES FOR PEOPLE WHO ARE DEAF OR HARD OF HEARING

TDD SERVICE (Telecommunications Device for the Deaf) - Allows people who are deaf or hard of hearing to communicate with staff about bill information and legislators.

Senate

TDD: 296-0250

Senate Index Office

House

TDD: 296-9896 or 1-800-657-3550

House Information Office

A public access TDD pay telephone is located near the Capitol information desk on the first floor of the Capitol Building.

MINNESOTA RELAY SERVICE - A communications service that links deaf, hard of hearing, speech impaired, and hearing people via the telephone.

The service, which is operated by the state/telephone company, allows a person who is deaf or hard of hearing or who does not use speech to contact a relay operator via TDD. The operator then reads the TDD user's words aloud to the voice-user and types the voice-user's words to the TDD user. Relay operators have been trained in ethics, procedure and American Sign Language grammar. The operators will pass conversations along, but will not interfere or advise users. All calls are confidential. The 24-hour relay service is provided at no cost to callers. Long distance calls will be billed accordingly.

TDD/voice number (for Metro Area): 297-5353

TDD/voice number (for Greater Minnesota): 1-800-627-3529

INTERPRETERS - Available with advance notice (at least 24 hours) for committee hearings and floor sessions.

Call: Senate

Sergeant-at-Arms

296-1119 (voice)

House

Sergeant-at-Arms

296-4860 (voice)

ASSISTIVE LISTENING DEVICES - Large area assistive listening devices available at meetings for use by people who are deaf or hard of hearing. Amplification devices are to be returned immediately following the meeting:

What ADA Services are Offered in the Legislature? (continued)

Senate: For Rooms 15, 107, 112, 123, 125, and the Senate Chamber.
Devices available in Senate Sergeant-at-Arms, Room 1, Capitol.
Call 296-1119 (TDD: 296-0250).

House: For 10 State Office Building hearing rooms and the House Chamber.
Devices available in House Information, Room 175, State
Building, or the Chief Clerk's Office, Room 211, Capitol Building.
Call 296-2146 (TDD: 296-9896).

SERVICES FOR PEOPLE WHO ARE BLIND OR VISUALLY IMPAIRED

SIGNS - Raised numbers and Braille signs identify offices and rooms in the Capitol and State Office Building. Elevators are equipped with Braille control signs.

LARGE PRINT - Some printed material may be enlarged on House and Senate copying machines. If an enlarging machine is not readily available, contact:

Senate

Senate Information Office
Room 231, Capitol

House

House Information Office
Room 175, State Office Building

READERS - Available with advance notice for printed materials.

Call: Senate

Senate Information Office
296-0504

House

House Information Office
296-2146

TAPES - Committee meetings and floor sessions are tape recorded. With advance notice, tapes are available for listening or purchase.

To LISTEN to a tape:

Legislative Reference Library Tape Library
Room 71, Ground Floor, State Office Building
296-0767

To PURCHASE a tape:

Legislative Reference Library
Room 645, State Office Building
296-3398
Cost: \$12.50 as of 12/31/92

Questions and Answers

WHAT IS THE LEGAL DEFINITION OF DISABILITY?

An individual with a disability is a person who:

- 1) Has a physical or mental impairment that **substantially** limits one or more major life activities;
- 2) Has a record of such an impairment; or
- 3) Is regarded as having such an impairment.

MAJOR LIFE ACTIVITIES are those basic activities that the average person can perform with little or no difficulty. Major life activities include walking, caring for oneself, seeing, hearing, speaking, performing manual tasks, breathing, learning, and working.

WHAT IS A PHYSICAL OR MENTAL IMPAIRMENT?

A physical or mental impairment includes:

- 1) any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of several body systems, or
- 2) any mental or psychological disorder.

EXAMPLES of physical or mental impairments include: speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, mental or emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), drug addiction and alcoholism.

WHO RECEIVES CONCERNS OR COMPLAINTS?

If a person wishes to review the ADA or its regulations, ask questions about rights and remedies under the ADA, request a reasonable modification to the legislature's policies, practices or procedures, or file a written grievance with the Legislature alleging non-compliance with the ADA, the person should contact:

Janet Lund
Coordinator for the ADA
Legislative Coordinating Commission
Room 85, State Office Building
St. Paul, MN 55155
(612) 297-3697
TDD: (612) 296-9896 or 1-800-657-3550
Relay: (612) 297-5353 or 1-800-627-3529

APPENDIX A

Minnesota Legislature Americans with Disabilities Act

EMERGENCY EVACUATION PROCEDURES

In case of a fire or emergency in the Capitol or the State Office Building, members and staff are responsible for helping a person with a disability to evacuate. In particular, **people with mobility disabilities (for example, a person who uses a wheelchair) may need assistance.**

WHEN THE FIRE ALARM SOUNDS, use the "buddy system". That is, two people (buddies) should assist each person with a mobility disability.

In the CAPITOL BUILDING:

- Move the person to an **area free of smoke.**
- One buddy should stay with the person, preferably near a telephone so you can call the fire department in case you change location.
- The second buddy should exit the building and tell the fire department the location of the person with the disability.

In the STATE OFFICE BUILDING:

- Move the person to **one of the stairwells.**
- One buddy should stay with the person.
- The second buddy should exit the building and tell the fire department the location of the person with the disability.

IMPORTANT POINTS TO REMEMBER IN CASE OF A FIRE OR EMERGENCY EVACUATION

1. If you discover a fire and **NO ALARM IS SOUNDING**, call Capitol Security (6-6741).
2. **IF AN ALARM IS SOUNDING**, do **NOT** call Capitol Security.
 - Unnecessary phone calls will tie up their switchboard.
 - Capitol Security will already know where the alarm is sounding.
3. **DO NOT USE THE ELEVATORS.** They are reserved for the fire department.

APPENDIX B

Minnesota Legislature Americans with Disabilities Act

NOTICE TO THE PUBLIC

It is the policy of the Minnesota Legislature to comply with the provisions of the Americans with Disabilities Act, 42 U.S.C.A. Section 12101 et. seq. ("ADA"). The ADA prohibits discrimination against individuals with disabilities on the basis of their disability. The ADA provides, in part, that individuals with disabilities shall not be excluded from participating in or be denied the benefits of any program, service or activity offered by the Legislature.

The ADA requires that the Legislature communicate effectively with individuals who have speech or visual impairments or who are deaf or hard of hearing. The Legislature strives to provide auxiliary communication aids to individuals with disabilities as necessary to afford them equal opportunity to participate in or benefit from the Legislature's programs, services, or activities.

Should you wish to review the ADA or its interpretive regulations, ask questions about your rights and remedies under the ADA, request a reasonable modification to these policies, practices or procedures, or file a written grievance with the Legislature alleging non-compliance with the ADA, please contact the Legislature's Designated Coordinator for the ADA listed below.

Janet Lund
Legislative Coordinating Commission
Room 85, State Office Building
St. Paul, MN 55155
(612) 297-3697

TDD: (612) 296-9896 or 1-800-657-3550

Relay: (612) 297-5353 or 1-800-627-3529

APPENDIX C

Minnesota Legislature Americans with Disabilities Act

GRIEVANCE PROCEDURES

The Minnesota Legislature has established grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action that is prohibited by Title II of the American's with Disabilities Act (ADA). This grievance procedure is to be used by people with disabilities who are eligible for the services, benefits, programs or activities of the Legislature.

Title II states in part, that "no otherwise qualified disabled person shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination" in programs sponsored by a public entity.

Complaints should be sent to: Janet Lund
Legislative Coordinating Commission
Room 85, State Office Building
St. Paul, MN 55155
(612) 297-3697
TDD: (612) 296-9896 or 1-800-657-3550

- Step 1: A complaint should be filed in writing containing the name and address of the complainant, a brief description of the violation and the accommodation sought. The complaint shall be filed within 15 working days after the complainant becomes aware of the alleged violation. Within 10 working days of the receipt of the written complaint, the ADA Coordinator shall review the complaint for completeness and validity, shall make all parties to the complaint aware of the allegation, obtain additional information related to the complaint if necessary, and shall attempt to resolve the complaint.
- Step 2: If the ADA Coordinator is not able to resolve the complaint in step 1, the ADA Coordinator shall schedule a meeting, which will include the ADA Coordinator, a representative of the Legislature, and the complainant within 25 working days from receipt of the original complaint. The ADA Coordinator will respond in writing to the complaint detailing any actions taken or proposed by the Legislature within 15 days of the meeting.
- Step 3: If the complainant is not satisfied with the Legislature's proposal to resolve the complaint, the complaint should be referred to the Chair of the Legislative Coordinating Commission (LCC). The Chair of the LCC will have 30 days to review the complaint and any documentation associated with the complaint and respond to the complainant in writing.
- Step 4: Nothing in this procedure prevents any individual who believes they have a grievance under the ADA from contacting the Minnesota Department of Human Rights, the Equal Employment Opportunity Commission, or the U.S. Department of Justice.
- Step 5: Any time lines established in these procedures may be waived by written mutual consent.

APPENDIX D

Minnesota Legislature Americans with Disabilities Act

SUGGESTED LANGUAGE

The following is suggested language for:

Legislative Publications

"Upon request, this publication can be made available in alternative formats, such as large print or cassette tape. Please call (insert appropriate name) at 612-296-_____ (voice) or 612-296-_____ (TDD)."

Meeting Notices

"If you need special accommodations, please call (insert appropriate name) at 612-296-_____ (voice) or 612-296-_____ (TDD)."

Job Postings and Employment Ads

"ADA/Equal Opportunity Employer"

ACCESS AMERICA

The United States Architectural & Transportation Barriers Compliance Board

1993, Number 2

An Official Publication

Looking Back... Looking Ahead—20 Years of Service

This issue of *Access America* features a special section celebrating the U.S. Architectural and Transportation Barriers Compliance Board's 20th anniversary and the 25th anniversary of the Architectural Barriers Act passed by Congress in 1968. The special section begins on page 5.



November Board Meeting Produces Four Actions

At its November 10, 1993, meeting in Washington, D.C., the Access Board took four actions. Three were rulemaking actions; the fourth was adoption of a charter for an advisory committee.

Some of the rulemaking actions are carried out jointly with other agencies and require approval by those agencies. An individual action does not take effect until notice of the action has been published in the *Federal Register*. The Board expects publication in early 1994.

The three rulemaking actions taken by the Board in November are:

Adoption of the final rule to amend the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities to include requirements for certain state and local government facilities

When it is published in the *Federal Register*, this new rule will add four sections to the *ADA Accessibility Guidelines (ADAAG) for Buildings and Facilities*, published by the Board in July 1991.

The guidelines will ensure that newly constructed and altered state and local government facilities,

(continued on page 4)

Recreation Committee Moves Toward 1994 Report

Since appointment by the Access Board in May 1993, the Recreation Access Advisory Committee has divided itself into six subcommittees, held four days of full-committee meetings open to the public and sponsored a public forum expressly for hearing views, concerns and issues offered by the public on the subject of accessibility to recreation facilities and outdoor developed areas.

The 27-member Committee was formed to gather information on issues to consider in developing accessibility guidelines for newly constructed and altered recreation facilities and outdoor areas covered by the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA). Based on the Committee's final advice and recommendations, the Board plans to publish a proposed rule in 1995.

Members of the Committee, who are owners or operators of recreational facilities, designers and manufacturers, individuals with disabilities and government officials, have divided into six working subcommittees, each of which has met at least once. The six are: amusement parks, developed outdoor recreational facilities, golf, play area settings, recreational boating/fishing facilities and sports facilities.

(continued on page 3)

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Board Meeting (continued from page 1)

covered by title II of the ADA, will be accessible to and usable by all people in terms of architecture, design and communication.

The new sections of the ADAAG are:

- Section 11—Judicial, Legislative and Regulatory Facilities
- Section 12—Detention and Correctional Facilities
- Section 13—Accessible Residential Housing
- Section 14—Public Rights-of-Way

Adoption of a joint final rule to amend ADAAG by suspending temporarily, until July 26, 1996, requirements for detectable warnings at curb ramps, hazardous vehicular areas and reflecting pools

Detectable warnings are distinctively textured walking surfaces intended to be detectable by cane and under foot by people with visual impairments. The Board's action to suspend these provisions is based on a need for additional research on the necessity of detectable warnings at curb ramps, hazardous vehicular areas and reflecting pools, and on related safety factors. The action does not affect the ADAAG requirement for detectable warnings at transit platforms.

The final rule will be published in the *Federal Register* jointly with the Department of Justice and Department of Transportation.

Adoption of a joint notice of proposed rulemaking (NPRM) to amend ADAAG for Transportation Vehicles for over-the-road buses, to include additional requirements for people using mobility aids, including wheelchair users

Over-the-road buses are vehicles that have high passenger decks located over baggage compartments. They are frequently used for intercity fixed-route or charter tour bus service.

The NPRM will be published jointly with the Department of Transportation in early 1994. The Board and Department of Transportation are under statutory mandate to complete this rulemaking by May 16, 1994.



In addition to the rulemaking actions, the Board also approved:

Adoption of a charter to establish an ADAAG Review Advisory Committee

The charter as adopted outlines three responsibilities for the committee: to recommend editorial revisions to the ADAAG; to review ADAAG, including a comparison with other model codes; and to recommend future coordination of the Board's ADAAG rulemaking and the processes used by the American National Standards Institute, Council of American Building Officials and other model code organizations.

Members will include representatives of model code groups, building code officials, architects, building owners and managers and organizations representing individuals with disabilities. The Board expects to appoint members in early 1994 after the Office of Management and Budget has approved establishment of the committee.

Copies of the three rules adopted by the Board may be ordered now by calling the Access Board at (202)272-5434 (Voice), selection one on our telephone menu, or 202/272-5449 (TTY). Copies will be shipped *after* publication in the *Federal Register*, expected in early 1994.

Recreation Committee (continued from page 3)

Orlando, Florida; **Henry J. Thrower**, Professional Golfers' Association of America, Palm Beach Gardens, Florida; **Francine Wai**, Hawaii Commission on Persons with Disabilities, Honolulu, Hawaii; **Judith A. Wheeler**, States Organization for Boating Access, Lansing, Michigan; **Jan Elizabeth Wilson**, United States Olympic Committee, Disabled Sports Services, Colorado Springs, Colorado; and **W. Kenneth Wiseman**, Lehman/Smith/Wiseman Associates, Washington, D.C.

The Committee is scheduled to meet next on January 28 and 29, 1994, in Washington, D.C. The sessions will be open to the public.



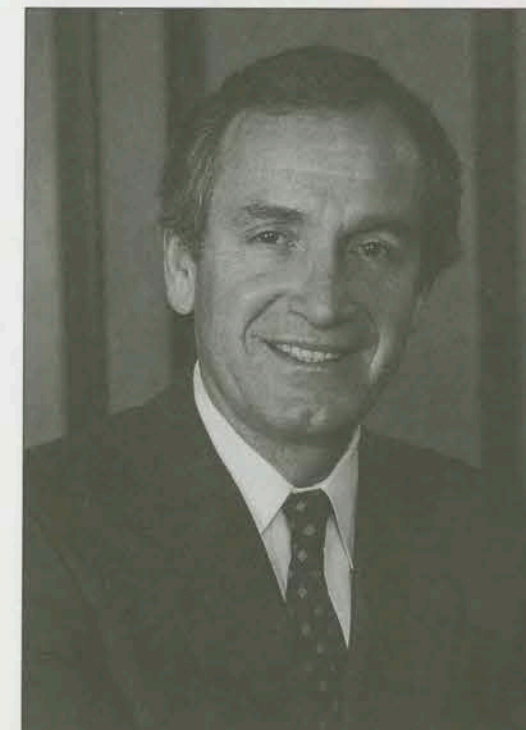
Golf

This photo is not intended to depict future accessibility guidelines for recreational facilities.

Twentieth Anniversary of the Access Board



Twenty-fifth Anniversary of the Architectural Barriers Act



"As the chair of the Senate Subcommittee on Disability Policy, I am pleased to acknowledge the 20th anniversary of the Access Board and the 25th anniversary of the Architectural Barriers Act (ABA).... With the Access Board as the lead agency in enforcing the ABA, the Federal government has become increasingly accessible, leading to more employment opportunities for persons with disabilities.

"When Congress enacted the Americans with Disabilities Act (ADA), we again turned to the Access Board for answers to difficult issues.

"I look forward to a day when accessibility is a reality for all Americans. I am confident that the Access Board's work will help us reach this goal."

The Honorable Tom Harkin
United States Senate
Chair, Subcommittee on Disability Policy

Looking Back...

Celebrating the Milestones of Accessibility

Access Board Marks Its 20th Anniversary

The most significant milestone in the history of accessibility in the United States occurred on July 26, 1990, with the signing into law of the Americans with Disabilities Act (ADA). This landmark civil rights law guarantees the rights of people with disabilities and prohibits discrimination on the basis of disability.

That historic event, however, was the culmination of over 20 years of effort to achieve accessibility. The two events we celebrate in this issue of *Access America* are the Architectural Barriers Act (ABA) of 1968 and the Rehabilitation Act of 1973, which created the Architectural and Transportation Barriers Compliance Board, known also as the Access Board.

Accessibility Becomes a Major Concern

An increasing awareness of the problems many Americans were encountering with barriers to accessibility led Congress to take a careful and extensive

look at the problem in 1965 while considering the Vocational Rehabilitation Act Amendments. In September 1965, Congress created the National Commission on Architectural Barriers to Rehabilitation of the Handicapped.

The Commission's charge was threefold:

- To determine to what extent architectural barriers prevented access to public facilities
- To report on what was being done to eliminate barriers
- To propose measures to eliminate existing barriers and prevent new ones from being created

Design for All Americans, the Commission's June 1968 report, laid the groundwork for succeeding legislation. The report condemned the "unnecessary obstacles that prevent millions of people with disabilities from functioning adequately and being productive" and warned that "the rising cost of thoughtlessness, in both human and dollar terms... [will] force this nation...to pay an ever-increasing price if it continues to create an environment in which only the able bodied can thrive."

Major Milestone Dates

1968	Congress passes the Architectural Barriers Act (ABA).	Housing and Urban Development, Postal Service, and the General Services Administration. UFAS is based on MGRAD.	
1973	Congress creates the Architectural and Transportation Barriers Compliance Board (Access Board) to enforce the ABA. The Board is comprised of Cabinet-level officials of eight Federal agencies.	1990	Congress passes the Americans with Disabilities Act (ADA).
1974	The Board meets for the first time; Congress adds a ninth Federal agency to the Board.	1991	<i>The Access Board publishes the ADA Accessibility Guidelines for Buildings and Facilities, ADA Accessibility Guidelines for Transportation Facilities and ADA Accessibility Guidelines for Transportation Vehicles.</i>
1978	Congress requires the Board to develop minimum accessibility guidelines, adds a tenth Federal agency to the Board, and expands the Board to include 11 public members to be appointed by the President. At least five of the public members are to be people with disabilities.	1992	The Board publishes the <i>ADA Accessibility Guidelines Checklist Manual</i> and a series of nine ADA Accessibility Guidelines manuals on transit systems.
1982	The Access Board publishes the <i>Minimum Guidelines and Requirements for Accessible Design</i> (MGRAD).	1993	The Board forms the Recreation Access Advisory Committee, a new approach to fact-gathering in the early stages of the rulemaking process. Members of the Committee reflect the diversity of issues and interests to be explored in rulemaking which will create accessibility guidelines for recreational facilities.
1984	The <i>Uniform Federal Accessibility Standards</i> (UFAS) are adopted by the four standard-setting agencies—departments of Defense,		

The Architectural Barriers Act Becomes Law

On August 12, 1968, Congress began implementing the Commission's recommendations by enacting the Architectural Barriers Act (ABA). In passing this law, Congress expected two major outcomes:

- That Federal buildings and facilities would become fully accessible to people with disabilities
- That the Federal government's activity in eliminating barriers would be a showcase, setting an example for state and local governments and private industry

The ABA was introduced by Senator E.L. Bartlett of Alaska in January 1967. One of Senator Bartlett's aides was Hugh Gallagher, a wheelchair user who had experienced firsthand the problem of barriers to accessibility when he was unable to enter the National Gallery of Art without assistance. Although Senator Bartlett convinced the National Gallery to install a ramp in 1965, he recognized that the inaccessibility there was mirrored many times over in other buildings.

It was Hugh Gallagher who drafted the bill presented by Senator Bartlett in 1967 and which became the basis for the Architectural Barriers Act passed a year and a half later.

"When I was a legislative assistant to the late Senator E.L. (Bob) Bartlett, I conceived and drafted the language for what became the Architectural Barriers Act of 1968. It seemed to me then that

disabled people, as full and equal citizens who pay their taxes, have a right, a civil right, to full and equal access to all public facilities," Gallagher said in a recent interview.

Three years after the Architectural Barriers Act had become law, Congress observed that compliance was uneven and that no initiatives to create Federal design standards for accessibility were underway. Clearly, one central agency needed to take charge of enforcing the ABA and ensuring development of design standards.

"When a building is ramped, a performance is signed [for hearing-impaired people], and public signs are printed in Braille—these things say to disabled people, 'Welcome, you belong, you are part of us.' The work of the Architectural and Transportation Barriers Compliance Board has opened up America to disabled people."

Hugh Gallagher, Author
Former Legislative Assistant to the late Senator E.L. (Bob) Bartlett
Drafter of original concept and language of the Architectural Barriers Act



"Unnecessary attitudinal and physical barriers made the words equal opportunity ring hollow for 43 million Americans with disabilities. In passing the Americans with Disabilities Act, we changed the course of our country and of millions of Americans for years to come."

"We have a great future ahead. Through the efforts of the... Board, we will not only continue to assure access but, more importantly, ensure that the doors of opportunity will be accessible for all Americans."

The Honorable Steny H. Hoyer
United States House of Representatives
Primary Sponsor, Americans with Disabilities Act

The Access Board Comes into Being

The concept of an Architectural and Transportation Barriers Compliance Board began to take shape during hearings on the Rehabilitation Act of 1972, held by the Senate Committee on Labor and Public Welfare (later renamed the Senate Committee on Labor and Human Resources). The actual legislation creating the Board was the Rehabilitation Act of 1973, Section 502, which became law in September 1973. The dual mission of the Board was to ensure Federal agency compliance with the Architectural Barriers Act and to propose solutions to the environmental barriers problems addressed in the ABA.

Congress was clear in its intent that compliance be the primary essence of the Board's function. In a report, the Senate Committee on Labor and Public Welfare reported that "Barrier free design in Federal buildings and federally assisted projects is mandated in present law but has never been adequately enforced. The Committee feels that... it is imperative that... [disabled] individuals be given the opportunity to move freely in the society into which they must integrate themselves. The Committee believes this Board can serve to accomplish this."

As originally constituted, the Board had Cabinet-level officials of eight Federal agencies responsible for nearly all Federal programs which affected the design, development and construction of buildings and facilities. The eight were the departments of Health, Education and Welfare; Housing and Urban Development, Interior, Labor and Transportation;

the General Services Administration, Veterans Administration and the U.S. Postal Service.

In March 1974, the Access Board—at that time called by its full name, the Architectural and Transportation Barriers Compliance Board, or ATBCB for short—held its first meeting, a session called by Caspar Weinberger, Secretary of Health, Education and Welfare (HEW). One of the Board's first actions was to set up a hearing on the transportation needs of persons with disabilities. The hearing was held in San Francisco in June 1974. A second public hearing—on the housing needs of people with disabilities—was held in Chicago in June 1975.

With amendments to the Rehabilitation Act in 1974, Congress included a number of changes to the Board:

- The Board's compliance authority was strengthened, with the Board's authority to be "final and binding on the Department, agency, or instrumentality... and may include the withholding of Federal funds...."
- The Department of Defense became a Board member
- The Secretary of HEW was designated as Board chairman
- The Board was directed to appoint a Consumer Advisory Panel, the majority of whom were to be persons with disabilities
- The Board was directed to hire an executive director and other staff



"...ADA was a watershed event. We determined unequivocally that our Nation's proper goals regarding people with disabilities are to assure equality of opportunity, full participation, and economic self-sufficiency. But [let us also remember]... the silver anniversary of the progenitor of ADA—the Architectural Barriers Act of 1968.... this Nation's first attempt to legislate an accessible and inclusive society."

The Honorable Robert Dole
United States Senate Minority Leader
From the Congressional Record of August 6, 1993

Staffing of the Access Board Begins

In March 1975, James S. Jeffers was appointed as the Board's first executive director. Within the year, he had filled key staff positions.

In 1976, a 16-member National Advisory Committee on an Accessible Environment was created. The Committee, representing consumers and individuals with disabilities, held its first meeting in May. That same year, the Board helped the National Park Service design renovations to make major national monuments accessible during the Bicentennial celebration. In other cooperative efforts, the Board published *Access Travel: Airports*, developed with the Airport Operators Council International, and worked with Amtrak to design accessible railroad cars.

During 1976 and 1977, the Board expanded public awareness efforts with a film, produced for a White House presentation and then distributed nationally, and a series of public service radio and television announcements promoting accessibility.

1978 Brings Major Changes

The Rehabilitation Act Amendments of 1978 changed the structure and composition of the Board and added to its mandate.

Under these amendments, the Department of Justice became the tenth Federal agency to join the Board. In addition, for the first time public members were added to the Board, to be appointed by the President. Of the 11 public members, at least five were to be persons with disabilities. The amendments also disbanded the National Advisory Committee on an Accessible Environment since the newly expanded Access Board would now include public members and individuals with disabilities.

The 1978 law also established that the chairman would be appointed by the President to serve a two-year term. Thereafter, the chairman would be elected by a vote of the majority of the Board and the term could not exceed one year.

The first public members were named by President Jimmy Carter on December 4, 1979. The President also appointed Max Cleland as chairman. Cleland headed the Veterans Administration at the time of his appointment as Access Board chairman.

Among other features of the 1978 Rehabilitation Act Amendments:

- The Board was authorized to establish minimum accessibility guidelines and requirements for the

The first recorded complaint under the Architectural Barriers Act was received on January 14, 1974, even before the Board officially began operating. However, the first full year of recording complaints about inaccessibility in federally funded facilities was fiscal year 1977.

Robert M. Johnson succeeded Jeffers as executive director during 1977. "I had been executive director less than a month when I signed the first citation issued by the Board against a Federal agency for not complying with the law," Johnson recalls.

By September 30, 1993, a total of 2,714 complaints had been received. Of these, 2,601 cases—nearly 96 percent—have been closed. The Board has consistently tried to resolve complaints amicably. Rarely has that policy objective not been achieved. In the 16 years of recordkeeping on complaints, the Board has issued only ten legal citations. The last one issued was in May 1989, when the Board filed a citation to obtain an order requiring the city of Philadelphia to install elevators and accessible fare gates at two subway stations.

Architectural Barriers Act of 1968 and to ensure compliance with the requirements

- The Board's technical assistance role was expanded to include providing help on the removal of barriers—including for the first time, communication barriers—in federally-funded buildings and facilities. In addition, the Board was directed to provide technical assistance to private entities "to the extent practicable"

Robert Johnson, recalling recently the early efforts to develop common accessibility standards, noted that the *Minimum Guidelines and Requirements for Accessible Design* (MGRAD) were created to assist the four standard-setting agencies—the departments of Defense, Housing and Urban Development, Postal Service, and the General Services Administration—in developing accessibility standards under the Architectural Barriers Act.

"The Board published MGRAD on January 16, 1981," Johnson remembered. "Resistance to accepting the MGRAD led to compromise and laid the base for reforming and unifying national accessibility requirements."

The final MGRAD was published in 1982. On the basis of these guidelines, the *Uniform Federal Accessibility Standards* (UFAS) were adopted by the four standard-setting agencies in August 1984.

Board Membership Grows

In 1980, the full Board membership was 21: ten Federal and eleven public members. Within that year, the Department of Health, Education and Welfare (HEW) split into the departments of Education and of Health and Human Services. The Department of Education replaced HEW on the Board, and the Department of Health and Human Services became the Access Board's eleventh Federal member.

In 1986, amendments to Section 502 of the Rehabilitation Act of 1973 increased the Board's membership from 22 to 23. The number of public members appointed by the President increased to 12, with the number of members with disabilities raised from five to six.

These amendments also required the Board chairman and vice chairman to be elected for one-year terms by majority vote of the Board's membership. In addition, the chairman and vice chairman would alternate from one year to the next between public and Federal members. For example, when the chairman is a public member, the vice chairman is a Federal member.

In 1992, the Department of Commerce was added to the Board as a Federal member, and the public membership was increased by one to keep a simple majority balance for public members. The 1992 additions brought the Access Board to its 20th-anniversary-year total of 25.

"The Access Board... has made significant contributions to improve the quality of life for persons with disabilities. One accomplishment in particular [has been] the Access Board's role in developing accessibility guidelines under the historic Americans with Disabilities Act.

"I am pleased to join with many others in extending my congratulations to the... Board, which is celebrating its 20th anniversary."

The Honorable Major R. Owens
United States House of Representatives
Chairperson, Subcommittee on Select Education and Civil Rights

"Developing the Uniform Federal Accessibility Standards was a singular accomplishment in interagency cooperation; reconciling the Minimum Guidelines and Requirements for Accessible Design with the ANSI A117.1 standard moved public and private efforts into productive collaboration."

Margaret Milner
Executive Director, Access Board, 1985-88

"Parking a car, withdrawing money from an automated teller machine, entering a building, and riding public transportation will no longer be significant hurdles for individuals with disabilities. The Access Board has helped bring the issue of barriers compliance to the center of local, state, and federal policy formulation.

"Please accept our congratulations on the Access Board's anniversary."

The Honorable Bill Goodling
United States House of Representatives
Ranking Minority Member
Committee on Education and Labor

The Honorable Cass Ballenger
United States House of Representatives
Ranking Minority Member
Subcommittee on Select Education and Civil Rights

The Access Board and the Americans with Disabilities Act (ADA)

During the 1980's, the Board continued its work in enforcing and providing technical assistance under the Architectural Barriers Act as it applied to certain Federal buildings and facilities. Increasingly, however, the Board was asked to take part in research and testimony before Congress on a range of accessible design issues which would come together as part of the civil rights legislation enacted on July 26, 1990, as the Americans with Disabilities Act (ADA).

In preparing the first draft of the ADA for proposal to Congress, the National Council on Disability interviewed members and staff of the Access Board and incorporated Board recommendations into the legislative proposal.

As the Administration considered the ADA, the Board was asked to write two "white papers," one to address building and facility issues related to people with disabilities, the second to examine transportation issues. Both documents were widely circulated among Federal officials and disability advocacy groups and became the basis for many accessibility provisions found in the final version of the ADA which became law.

Access Board Executive Director Lawrence W. Roffee and staff member Dennis Cannon, an expert on transportation issues, testified before the House Subcommittee on Surface Transportation and the House Subcommittee on Transportation and Hazardous Materials. Members of the Board staff also conducted workshops on technical issues for the House Subcommittee on Surface Transportation and for the Education and Labor Committee.

The Senate Subcommittee on Disability Policy, which had drafted the original bill, also called upon the Board to provide extensive technical assistance.

"Writing regulations for the ADA was a wonderful experience in democracy. People with disabilities and government officials struggled to capture the spirit and letter of the law in regulations."

Howard "Rocky" Stone
Access Board Member, 1988-91

Board Leadership: The First Twenty Years

At present, the Access Board's full membership is 25. The President appoints 13 members from the general public. The remaining 12 represent the departments of Commerce, Defense, Education, Health and Human

Services, Housing and Urban Development, Interior, Justice, Labor, Transportation and Veterans Affairs; the General Services Administration and the Postal Service. The chairmen from 1974 through 1993:

Stanley B. Thomas, Jr.
Department of Health,
Education, and Welfare
1974-1976

Arabella Martinez
Department of Health,
Education, and Welfare
1976-1979

Max Cleland
Veterans Administration
1979-1980

Mason H. Rose, V
California
1980-1981

William Bradford Reynolds
Department of Justice
1981-1984

Mary Alice Ford
Oregon
1984

Madeleine Will
Department of Education
Acting Chairman 1984-1985

Charles R. Hauser
Georgia
1985-1987

Thomas E. Harvey
Veterans Administration
1987-1988

William J. Tangye
Alabama
1988-1989

Stanley W. Smith
U. S. Postal Service
1989-1990

William H. McCabe
Connecticut
1990-January 1992

Gordon Mansfield
Department of Housing and
Urban Development
January-September 1992

Kathleen K. Parker
Illinois
September 1992-1993

A New Challenge— Rulemaking Under the ADA

The July 1990 ceremony at which the Americans with Disabilities Act was signed brought more than 2,000 people to the White House.

"In this extraordinary year," said President George Bush, "we have seen our own Declaration of Independence inspire the march of freedom. . . . It is altogether fitting that the American people have once again given clear expression to our most basic ideals of freedom and equality. The Americans with Disabilities Act represents the full flowering of our own democratic principles."

Unlike the Architectural Barriers Act which applies only to certain federally funded buildings and facilities, the ADA extends to people with disabilities civil rights similar to those available on the basis of race, color, sex, national origin and religion through the Civil Rights Act of 1964.

The ADA prohibits discrimination on the basis of disability in the private sector and in state and local

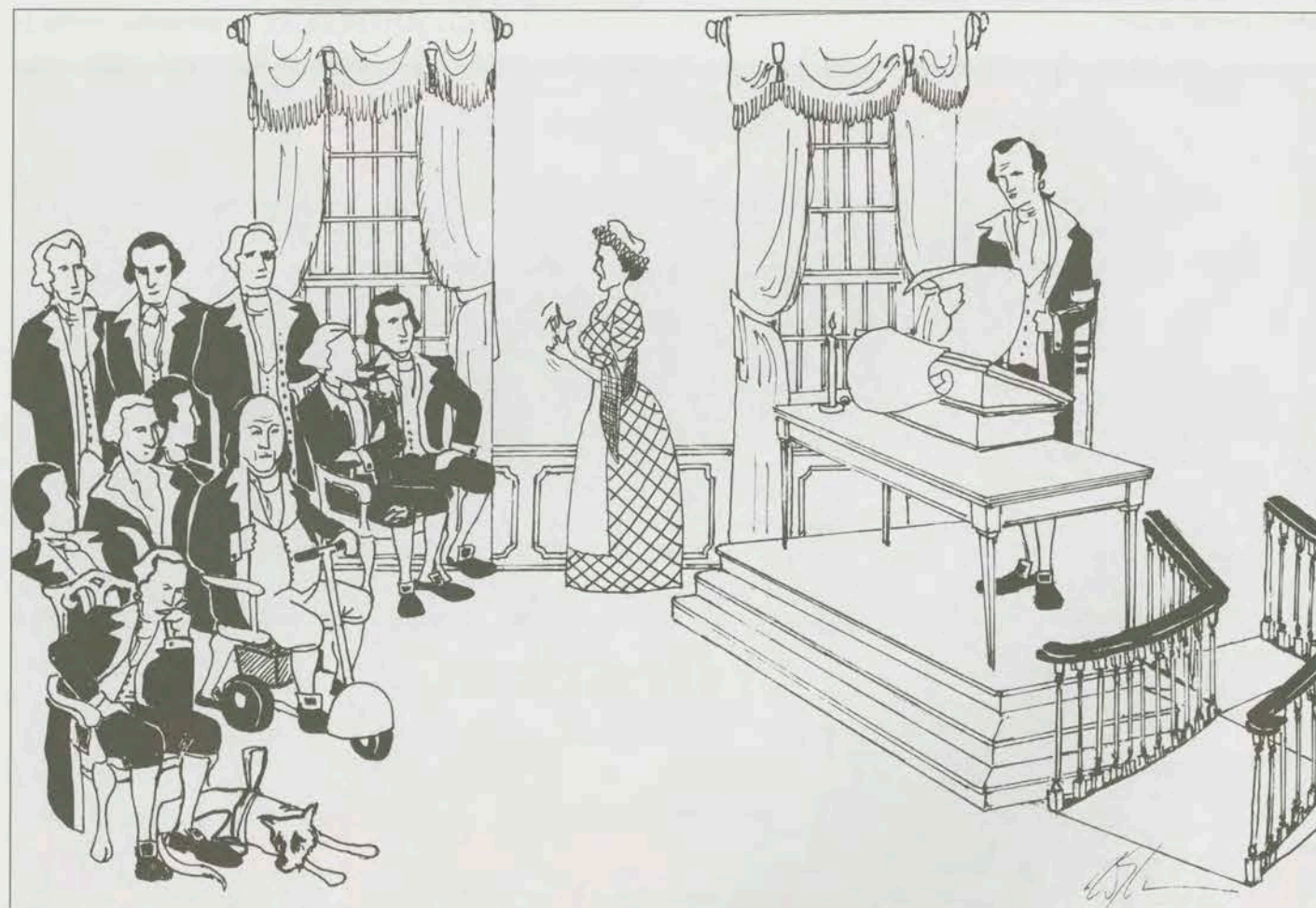
governments, public accommodations and services, including transportation, provided by public and private entities. The act also provides for telecommunication services for people with hearing or speech impairments.

From the signing of the ADA, the Board's mandate has expanded to include:

- Developing the ADA Accessibility Guidelines (ADAAG)
- Providing technical assistance and training on ADAAG
- Conducting research to support ADAAG

In anticipation of this legislation, the Access Board installed a toll-free technical assistance phone line to be operational on the day the ADA became law. The Board also began immediately to develop

David Yanchulis, a member of the Access Board staff, designed this illustration to celebrate passage of the Americans with Disabilities Act in 1990. It was originally published in the summer 1990 Access America newsletter.



The ADA - A Declaration of Independence

accessibility guidelines under the ADA and published its first notice of proposed rulemaking on January 22, 1991.

The final rule, *ADA Accessibility Guidelines for Buildings and Facilities* (Sections 1-9 of ADAAG), was published in the *Federal Register* on July 26, 1991, the first anniversary of the signing of the ADA. Also on July 26, 1991, the Department of Justice adopted all nine sections of the ADAAG for Buildings and Facilities as the standard for accessible design in its regulations for title III (Public Accommodations and Services Operated by Private Entities) of the ADA.

The first four sections of ADAAG for buildings and facilities contain general sections, scoping provisions and technical specifications which apply to all types of buildings and facilities.

Scoping provisions specify which elements and spaces (entrances, parking spaces, toilet rooms, for example) and how many within a building or facility must be accessible. ADAAG technical specifications describe in words and illustrations how to design the elements and spaces covered by the scoping provisions so that people with disabilities are able to enter and use them.

Sections 5 through 9 contain additional scoping provisions and technical specifications for restaurants and cafeterias (Section 5), medical care facilities (Section 6), mercantile establishments (Section 7), libraries (Section 8); and hotels, motels and transient lodging (Section 9).

On September 6, 1991, the Board published *ADA Accessibility Guidelines for Transportation Facilities* (Section 10) and *ADA Accessibility Guidelines for Transportation Vehicles*. Section 10 was added to ADAAG for buildings and facilities. The Board published the ADAAG for transportation vehicles as a separate document. It covers buses and vans, rapid rail vehicles, light rail vehicles, commuter rail cars, intercity rail cars, automated guideway transit vehicles, high-speed rail cars, monorails and trams and similar vehicles.

Also on September 6, 1991, the Department of Transportation adopted sections 1 through 10 of ADAAG for buildings and facilities and the Board's guidelines for transportation vehicles as the standard for accessible design in its ADA regulations.

The Board expects to publish ADA accessibility guidelines for state and local government facilities in early 1994. This rulemaking will add four new sections to ADAAG for buildings and facilities and will contain additional scoping provisions and technical requirements for judicial, legislative and regulatory facilities (Section 11); detention and correctional facilities (Section 12), residential housing (Section 13) and public rights-of-way (Section 14).

William H. McCabe was Access Board chairman in July 1990. He recalls the excitement surrounding the signing of the Americans with Disabilities Act, "but that was quickly followed by our realizing the imposing task before the Board to publish accessibility guidelines and then to provide technical help for people trying to put the guidelines into their plans for new buildings or changes to existing structures."

Kathleen K. Parker, Access Board chairman during 1993, believes that the Board has responded to the ADA challenge "with determination and an ability to see the impossible as possible."

"Since July 1990, we have not only published ADAAG, but our technical assistance staff has handled 54,000 phone calls, and we have held close to 200 training sessions on ADAAG. We also distribute some 50,000 copies of Board publications each year, including an ongoing series of technical bulletins written in response to frequently asked questions about the ADA Accessibility Guidelines," Parker stated.

"None of these achievements would have been possible without uncountable hours given by public and Federal members of the Board and the Board's staff to every aspect of the mission, from policy to the smallest technical detail," she concluded.



Speaking on July 27, 1993, at a White House gathering to commemorate the third anniversary of the Americans with Disabilities Act, President Bill Clinton said:

"Our country does not have a person to waste, and we must invest in each person's enormous potential by fully implementing the Americans with Disabilities Act. Bringing this law to life means empowering people with disabilities to make their own choices and creating a framework for independence and self-determination."

"My Administration is committed to shifting disability policy away from exclusion, towards inclusion; away from dependence, towards independence; away from paternalism, and towards empowerment."

"Our work is only beginning. I know that together we can fulfill the promise of the Americans with Disabilities Act and create a more inclusive society for all."



The members of the United States Architectural and Transportation Barriers Compliance Board—the Access Board—look forward to continuing the work of making America accessible for all Americans.

ADAAG Review to Coordinate with Other Guidelines and Standards

During 1994, the Board plans to begin a rulemaking effort to coordinate the ADA Accessibility Guidelines (ADAAG) and the accessibility standards published by the American National Standards Institute, the ANSI A117.1-1992 standards.

These ANSI standards for accessibility are incorporated into the model building codes used by most state and local governments for new construction and alterations covered under title III of the ADA.

Research

The Board selects future research projects on the basis of three considerations:

- Public comments received during rulemaking
- Technical information needed for future rulemaking
- Needs of the ongoing technical assistance program

The five research projects scheduled to be underway during 1994 are in the areas of detectable warnings, ramp slope and landings, space and reach range requirements for persons using power wheelchairs and three-wheeled scooters, public information for people with cognitive disabilities and a regulatory impact analysis for proposed recreation guidelines.

(The last issue of *Access America* [1993, Number 1] featured a three-page article, "Research Priorities for 1993-94.")

Detectable Warnings—The project will start with an extensive review of literature from around the world to identify research which has already been conducted on detectable warning surfaces. The project will also examine whether a need exists for detectable warning surfaces and, if so, where they are needed and what their technical specifications should be.

Ramp Slope and Landings—The project will result in recommendations on ramp slope and landing requirements for new construction and alterations and will include evaluating existing research and conducting tests with participants whose mobility

Coordinating ADAAG and ANSI standards will make implementation of accessibility requirements for new construction and alterations in both titles II and III of the ADA easier and more effective.

In 1994, the Board will convene an advisory committee with representatives from the model code organizations, building code officials, and organizations for people with disabilities.

The planned timetable for this effort calls for the committee to submit an analysis and report during 1995.

impairments are of types not studied previously. Among participants will be people who use three-wheel scooters, large power chairs, lightweight wheelchairs, crutches and walkers.

Space and Reach Range Requirements for Persons Using Power Wheelchairs and Three-Wheeled Scooters and Interior Circulation in Transportation Vehicles

This project will provide recommendations for technical specifications for reach ranges, clear floor space and turning and maneuvering spaces. In addition, the project will address whether new specifications are needed to address interior circulation in transportation vehicles, particularly space limitations at fare boxes in buses and light rail vehicles.

Public Information for Persons with Cognitive Disabilities

The project will produce technical assistance materials on symbols and signage most effective in providing public and wayfinding information for people with cognitive disabilities in buildings, transportation facilities and outside areas.

Regulatory Impact Analysis for Proposed Recreation Guidelines

This effort will produce a cost/benefit profile of proposed guidelines for recreation facilities and outdoor developed areas.

During 1994, the Board plans to publish a notice in the *Federal Register* to solicit public comment on future projects for the research agenda. The Board will select research efforts for 1995 and 1996 on the basis of public response to the notice.

Technical Assistance and Training

The Board's technical assistance and training programs are vital links in the Federal government's overall effort to inform the public about accessibility requirements under the Americans with Disabilities Act. Since 1990, the year the ADA became law, the Board has responded to over 54,000 technical assistance telephone calls and mailed out over 30,000 packets of information.

The Board expects the demand for technical assistance and training to increase in 1994 and 1995 with publication of the ADAAG for state and local government facilities and over-the-road buses. In particular, some of the new sections of ADAAG with applicability to state and local government facilities will present entirely new accessibility concepts.

To meet the demand, the Board anticipates responding to 45,000 technical assistance phone calls in the next two years, sending out 30,000 or more information packets and providing 170 individualized training sessions to architects, the design and construction industry, designers of public transit systems and facilities, and state and local government officials.

In addition, the Board will publish more technical assistance manuals and bulletins, including bulletins on public rights-of-way. Also under exploration are ways to make the Board's publications more available to the public through a computer bulletin board.

Enforcement of the Architectural Barriers Act (ABA)

Perhaps the message of accessibility is being heard, and those entities constructing buildings and facilities with Federal funds are making them accessible.

In addition, the Board finds Federal agencies increasingly willing to take corrective action to remove barriers to accessibility. As a result, about 60 percent of cases closed in fiscal year 1993 under the ABA were closed because of barrier removal.

The Board has a referral system for complaints which fall under the ADA rather than the ABA. The Board's Office of Compliance and Enforcement has developed materials explaining the ADA and directing people to appropriate Federal agencies for handling accessibility issues not specifically related to the ABA.

New Programs for Better Service

The Board's expanded public communications program will coordinate efforts to deliver information to the Board's publics and customers, to assess needs for specific products and services and to develop ways to address the needs through technical assistance, training, publications, and video and audio presentations.

The program will also increase access to information through a variety of channels, including a recorded news and information phone line, expanded and refined mailing lists, a computer bulletin board and a more focused and aggressive outreach to news media serving Access Board audiences.

The communications program will foster collaborative efforts with outside groups, such as other Federal agencies, state and local governments and major Board customer groups—architects, designers, public officials, building and construction managers. The purpose of collaboration is to use and share

resources more effectively and to be more responsive to the agency's publics inside and outside the Federal government.

The Board plans to implement a total quality program. Staff orientation and training has already begun, and during 1994, the entire staff will take part in sessions to develop understanding of the quality management concept and to learn about specific techniques of survey and results measurement and the team approach to defining and solving problems.

Both of the Board's new programs are based on a philosophy that emphasizes effective two-way communications resulting in better products, better services, better working relationships with all the agency's internal and external publics.

The Access Board is moving ahead with enthusiasm and energy, reassured by the progress achieved over the past 20 years, ready for the challenges yet to come in making America fully accessible for all people.

Accessibility Across the USA

The following articles are presented for information only. Neither endorsement of the organization, product, or service nor guarantee of accuracy is implied.

Access Board Provides Training Accessibility for People with Hearing Impairments

The Access Board has provided funding for a year to the Small Agency Council, a consortium of Federal government agencies, to make sign language interpretive service available at the Council's training sessions.

This will increase training opportunities for Federal employees with hearing impairments and will also help promote the ADA's mandate to eliminate communications barriers to accessibility.



Resource Offers Help in Finding Accessible Apartments

The National Accessible Apartment Clearinghouse, a service of the National Apartment Association in Washington, D.C., helps prospective renters match their needs with accessible apartments listed with the Clearinghouse by owners and managers.

The service is free. Listings of accessible apartments cover all geographical areas of the United States. If rental units are not available in a particular location, referrals are made to other resources such as the Independent Living Centers.

Donna Neuman coordinates the Clearinghouse, located at 1111 14th Street, NW, 9th Floor, Washington, DC 20005. The toll free number is 1-800-421-1221; in Washington, (202) 842-4811.

Bulletin #4: Surfaces Is Now Available

An ADA pamphlet, *Bulletin #4: Surfaces*, is now available by calling the Access Board at (202) 272-5434 or writing to the Board at 1331 F Street, NW, Suite 1000, Washington, DC 20004-1111.

The new publication, the latest in a series of technical assistance bulletins, explains what surface characteristics are required of an accessible route and why they are required. Among the questions the pamphlet addresses are:

- How do I measure slip resistance? What are the recommended values for an accessible route?

Outstanding Disabled Veteran of 1993 Offers His Formula for Success

Jim Sursely of Apopka, Florida, is the Disabled American Veterans' choice as Outstanding Disabled Veteran of 1993.

In an interview, Sursely noted that public facilities need to be accessible and that the government needs to be responsible for promoting accessibility. "But as someone who is disabled, I have a responsibility to help non-disabled people bridge any gaps between us," he says. "Most people shy away from disabilities and wheelchairs. I realize that if I don't initiate a conversation, most people won't."



Auto Association Lists Accessibility Features for Lodging and Restaurants

The American Automobile Association (AAA) lists wheelchair accessibility as a feature of the hotels, motels and restaurants included in the travel guidebooks the association publishes each year. Beginning in 1994, the books will also list lodgings which are accessible to people with hearing impairments. These accessibility designations will be regular features in the travel guides, according to AAA spokesman Jerry Cheski at the organization's headquarters in Florida.

Rulemaking Begins for Over-the-Road Buses

Over 50 people attended an informational workshop in Washington, D.C., on accessibility issues for over-the-road buses. The two-day program was co-sponsored by the Access Board and Department of Transportation (DOT) to collect data in the early stages of a rulemaking process from those who will be affected by the guidelines and regulations to be developed.

Over-the-road buses (OTRBs) are vehicles with high passenger decks located over baggage compartments. They are most often used for intercity fixed-route or charter tour bus service. Among individuals attending the two-day workshop were bus and tour operators, manufacturers, and representatives of disability advocacy groups, bus and transit associations, state departments of transportation and Federal agencies.

The information shared at the session was intended to help attendees respond to DOT's advance notice of proposed rulemaking (ANPRM) published in the *Federal Register* on October 12, 1993. The ANPRM poses questions concerning OTRB operations, the cost of accessibility and the feasibility of accessible rest rooms. Responses to the advance notice, plus data collected at the workshop, will aid the Board and DOT in developing accessibility guidelines and regulations for OTRBs.

The Americans with Disabilities Act (ADA) directed Congress' Office of Technology Assessment to study over-the-road bus accessibility. That study, completed and published as a report in May 1993, will also be taken into account as the accessibility rule is written. The ANPRM is the first step in the rulemaking process. A notice of proposed rulemaking is expected in early 1994 and a final rule in May 1994.

New Phone System Provides Automated Services

The Board's new automated phone system offers a number of features our callers in the past have requested.

For instance, the new equipment has the capability to put callers in queue automatically so that calls will be answered by technical assistance staff in the order the calls are received.

People trying to reach the Access Board for answers to technical questions will find fewer busy signals than in the past.

In addition, each menu is now repeated automatically unless the caller makes another menu selection while the first menu is in progress. In the past, the menus did not repeat, leaving callers without a chance to listen more carefully to directions and choices.

The new system also features a "news and events menu." This selection (menu 5), recorded each month, includes dates of Board meetings and other public sessions and information on *Federal Register* notices, new publications and training opportunities.

The Board is aware that certain problems with the phone system are yet to be solved. We are especially concerned that some TTY/TDD callers have had difficulty in reaching staff members. We are working on better ways to handle all calls more efficiently and responsively.

Here are the phone menu choices you will hear when you call the Access Board:

menu 1—the publications order line; callers can leave their names to order a specific publication or to request a free listing of all Access Board publications

menu 2—the technical assistance line; callers are automatically placed in queue

menu 3—transfer line to the compliance and enforcement office for help on accessibility issues enforced under the Architectural Barriers Act

menu 4—automated personnel line; position vacancy listings, other personnel issues

menu 5—the news and events line

Please let us know how our new phone system is working for you. We welcome suggestions on ways to improve it.

**For technical assistance call
1-800-USA-ABLE (1-800-872-2253).**

For other calls:

- (202) 272-5434 (Voice)
- (202) 272-5449 (TTY)
- (202) 272-5447 (FAX)

Complaints Received Under the Architectural Barriers Act (ABA) in Fiscal Year 1993 by State

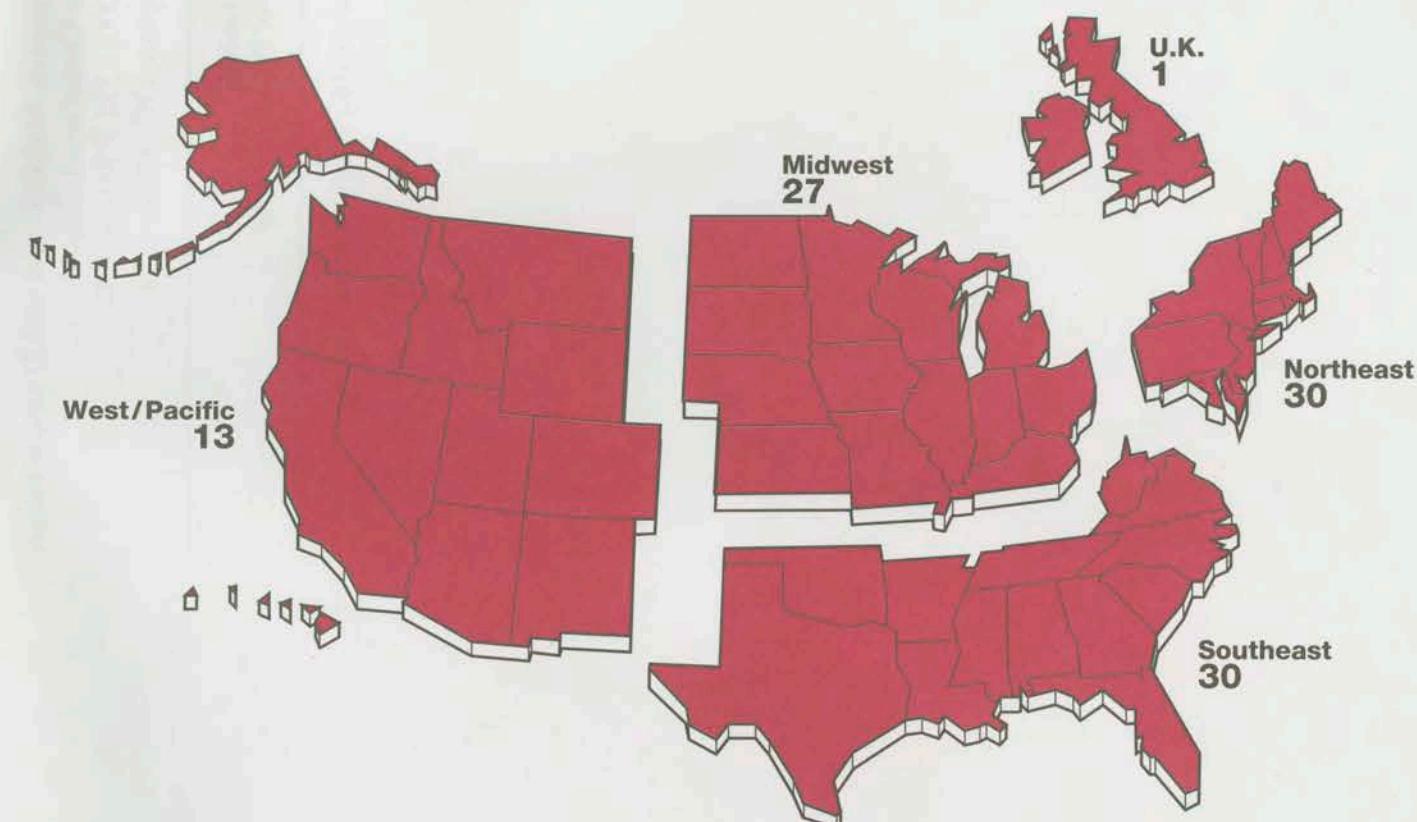
Alabama	1	Nebraska	0
Alaska	1	Nevada	0
Arizona	2	New Hampshire	0
Arkansas	0	New Jersey	2
California	4	New Mexico	1
Colorado	4	New York	4
Connecticut	0	North Carolina	1
Delaware	0	North Dakota	0
Dist. of Columbia	7	Ohio	4
Florida	6	Oklahoma	0
Georgia	0	Oregon	1
Hawaii	0	Pennsylvania	10
Idaho	0	Puerto Rico	0
Illinois	2	Rhode Island	0
Indiana	7	South Carolina	4
Iowa	0	South Dakota	0
Kansas	0	Tennessee	4
Kentucky	0	Texas	8
Louisiana	1	Utah	0
Maine	0	Vermont	0
Maryland	4	Virgin Islands	0
Massachusetts	3	Virginia	3
Michigan	9	Washington	0
Minnesota	2	West Virginia	1
Mississippi	1	Wisconsin	1
Missouri	2	Wyoming	0
Montana	0		

Total 101*

*Includes one complaint concerning a facility in Cambridge, England.

(See "Compliance Office..." on page 21.)

Regional Distribution of Fiscal Year 1993 ABA Complaints



TOTAL 101

Board Sets Final Rule for ATMs and Fare Machines

Since the last issue of *Access America* went to press, the Joint Final Rule on Automated Teller Machines and Fare Vending Machines has gone into effect. The rule was published in the *Federal Register* on July 15 and took effect on August 16, 1993. The Board issued this final rule jointly with the Department of Transportation.

The new rule amends the reach range requirements for automated teller machines (ATMs) located at financial institutions, shopping malls and subway stations and fare vending machines in transportation facilities. Originally, the ADA

Accessibility Guidelines (ADAAG) required that ATMs be accessible to persons using wheelchairs from both a forward and side reach to the unit. However, ATM manufacturers demonstrated that this requirement was difficult to fill because of the construction of individual ATM units.

Under the new rule, either a forward or side reach is allowable. The final rule also specifies that the mounting height of controls can vary depending on the reach depth. For each one inch of reach depth, the controls are lowered one-half inch.

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United States Architectural and Transportation Barriers Compliance Board

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AUG 24 1993

The Honorable Robert Dole
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

On behalf of the Access Board, I wish to thank you for your statement concerning the Architectural Barriers Act of 1968 (ABA) which appeared in the Congressional Record on August 6, 1993. As the agency which enforces the ABA, we agree that this law in fact gave rise to the civil rights movement for persons with disabilities.

I am enclosing a copy of the Access Board's most recent annual report. In carrying out our responsibilities under the ABA during fiscal year 1992, the Board closed 153 complaints, with 53% of these cases taking corrective action. Since 1977, the Access Board has received 2613 complaints under the ABA and in 41% of these cases, corrective action has been taken. Without question, the ABA has dramatically increased the accessibility of the Federal government and has led to enhanced employment opportunities for persons with disabilities.

I also want to take this opportunity to update you on the activities of the Access Board since passage of the Americans with Disabilities Act (ADA) in 1990. As you are aware, the Access Board published ADA Accessibility Guidelines (ADAAG) for buildings and facilities on July 26, 1991. Accessibility guidelines for transit vehicles and facilities were published on September 6, 1991. In the near future, we expect to publish accessibility guidelines for certain State and local government buildings and facilities. Taken together, these accessibility guidelines explain how specific features of a newly constructed or altered building can be made accessible to persons with disabilities.

During July 1993, we published in the Federal Register the enclosed three documents which I think you will find of interest. The first notice is the Joint Final Rule on Automated Teller Machines and Fare Vending Machines. The Access Board issued this final rule jointly with the Department of Transportation. This rule amends the reach range requirement for accessible automated teller machines (ATMs) and fare vending machines. Originally, ADAAG required ATMs to be accessible to individuals using wheelchairs from both a forward and parallel reach to the unit. However, ATM manufacturers explained that this requirement was difficult to meet because of the construction of the ATM units. The final rule issued last month allows for a parallel or a side reach and specifies the depth of reach ranges in order to assure that persons using wheelchairs will be able to use ATMs. The final rule also applies to fare vending machines since the reach range requirements are similar to those for ATMs.

The Honorable Robert Dole
Page 2

The second document is a Joint Notice of Proposed Rulemaking on Detectable Warnings issued by the Access Board and the Departments of Justice and Transportation. This notice proposes to temporarily suspend the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools until January 26, 1995. A detectable warning is a standardized feature applied to the walking surface which will warn individuals with vision impairments of hazards in their path of travel. The provision for detectable warnings was originally included in ADAAG because the Access Board was concerned about the safety of individuals with vision impairments. However, questions have been raised concerning the safe use of detectable warnings for persons using wheelchairs, as well as for other pedestrians. Moreover, there is a controversy among organizations representing persons with visual impairments concerning the actual need for detectable warnings. For these reasons, the Access Board is proposing to suspend this requirement in ADAAG and is conducting additional research in the current fiscal year.

The third notice is our Americans with Disabilities Act Research Priorities for Fiscal Years 1993 and 1994. The goals of the Access Board's research programs are to evaluate the effectiveness of existing accessibility guidelines, and to provide a basis for developing new accessibility guidelines. Based upon these two objectives, the Access Board is sponsoring research projects on detectable warnings and technical requirements for ramps in fiscal year 1993. During fiscal year 1994, the Access Board will conduct research on clear floor space, maneuvering clearances and reach ranges for individuals using power wheelchairs and three-wheeled scooters. In addition, the Access Board will sponsor a research project concerning public information for individuals with cognitive disabilities.

Senator Dole, the Access Board gratefully acknowledges the role that you have played in legislation which will enable persons with disabilities to take their rightful place in society. The Access Board is eager to continue to be a resource to you and the individuals you represent. We know that many of your constituents have difficult accessibility questions. The Access Board is prepared to provide technical assistance to you and your constituents on problems related to accessibility. In addition, members of our staff would be pleased to visit your office to discuss the role which accessibility will play in achieving the goals of the ADA, as well as the enforcement of the ABA.

Again, our thanks for your statement about the ABA. Please let me know if we can provide you with any assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lawrence W. Roffe".

Lawrence W. Roffe
Executive Director

Enclosures (4)

The Access Board

1992 ANNUAL REPORT



U.S. Architectural and Transportation
Barriers Compliance Board

Chairman's Message

Americans with Disabilities Still the Priority

As it was in 1991, the AATBC was proud in 1992 to continue its efforts to ensure that people with disabilities, deaf, and blind, were fully included in society. The publication of the 1992 Annual Report is a testament to the government's progress.

When the Access Board published a report in 1991, it was a landmark. It was the first time that a federal agency had published a report that was a letter to the public. It was a letter to them. They were the priority.

A working group of federal agencies involved, and we were able to get it done. We were able to get it done. Many people were very helpful. We were able to get it done. Many people were very helpful. We were able to get it done. Many people were very helpful.

Progress of rules that can have a significant impact on the lives of people with disabilities. It was a landmark. It was a letter to the public. It was a letter to them. They were the priority.

It has been a pleasure to serve as Chairman of the Access Board. I have met with Board members, especially the officers, who have given me a lot of help. I have met with Board members, especially the officers, who have given me a lot of help. I have met with Board members, especially the officers, who have given me a lot of help.

The Access Board will continue to work with the Department of Justice, the Department of Education, the Department of Health and Human Services, the Department of Transportation, the Department of Housing and Urban Development, the Department of Labor, the Department of the Interior, the Department of the Environment, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of the Coast Guard, the Department of the Marine Corps, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of the Coast Guard, the Department of the Marine Corps.

Finally, when I was elected Chairman of the Access Board, I wanted to know what the priority was. It was a landmark. It was a letter to the public. It was a letter to them. They were the priority.

As I have said many times as Chairman, I am proud to be part of the team that is working to make sure that people with disabilities, deaf, and blind, are fully included in society. The publication of the 1992 Annual Report is a testament to the government's progress.

U.S. Architectural and Transportation Barriers Compliance Board

Chairman

Chairman's Message

Americans with Disabilities Act (ADA): Still the Priority

As it was in 1991, the ADA was again in 1992 the Access Board's number one priority. Board members, staff, and resources were dedicated to creating the guidelines for title II of the ADA: accessibility to State and local government facilities.

When the Access Board published a notice of proposed rulemaking, State and local governments were informed that at a later date the final rule would apply to them. They were invited to comment.

A working group of Board members was formed; they discussed the issues relating to title II, met with other Federal agencies involved, and set out a plan of action to develop the guidelines. Many meetings and many hours of work later, the draft preamble and proposed guidelines were completed.

Proposed rules that can have a "...significant economic impact on a substantial number of small entities" must be accompanied by a regulatory impact analysis. With completion of that study, the guidelines were published in the *Federal Register* for public comment on December 21, 1992.

It has been a pleasure to serve as Chairman of the Access Board and work with Board members, especially the officers, who have again risen to the challenge with tireless, thorough efforts to develop the State and local government facilities guidelines. And I want to say a special word of thanks to the staff who, in addition to the work with the guidelines, have continued to respond day after day to an increasing number of requests for technical assistance.

The Access Board was originally created to ensure accessibility under the Architectural Barriers Act. We are achieving the removal of more barriers, due in part to the growing awareness brought along by the ADA of the need to make buildings accessible to all people. This year the agency's compliance program continued to resolve complaints efficiently and effectively.

Finally, when I was elected Chairman of the Access Board, I stated that I wanted the agency to "...do all it can to move toward a universal design standard that's acceptable to both the disability community and those involved with the design and creation of the built environment." I also called for a single set of standards to put us all on the same track to aesthetically appealing, safe, efficient, and functional designs for everyone.

As I conclude my term as Chairman, I see definite signs that we are beginning to move "on the same track" toward that single set of standards. Just one example this year was the Access Board's meeting with the American National Standards Institute (ANSI) Committee, model building code groups, State building code officials, and the Department of Justice to coordinate development of the *ADA Accessibility Guidelines* and ANSI standards. I am very pleased.



Gordon H. Mansfield

Gordon H. Mansfield
Chairman

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Fiscal Year 1992 Accomplishments

- Completed a *Notice of Proposed Rulemaking* on the *Americans with Disabilities Act (ADA) Accessibility Guidelines* for State and local governments under title II of the act.
- Responded to approximately 19,000 telephone requests for technical assistance. Distributed approximately 10,500 technical information packages to the public.
- Mailed nearly 41,000 copies of 32 Access Board publications.
- Distributed over 32,000 copies of the *ADA Accessibility Guidelines*.
- Finalized technical bulletins on detectable warnings and visual alarms.
- Completed the *ADA Accessibility Guidelines Checklist Manual*.
- Completed *ADA Accessibility Guidelines* manuals on buses, rapid rail, light rail, commuter rail, intercity rail, over-the-road-buses, high-speed rail, automated guideway transit systems, and trams systems.
- Completed a transportation access course with slides and workbooks.
- Completed training videos on the *ADA Accessibility Guidelines* and the *Uniform Federal Accessibility Standards (UFAS)*.
- Sponsored or participated in 62 *ADA Accessibility Guidelines* training sessions.
- Participated in meetings with representatives of model building code groups, the American National Standards Institute (ANSI) Committee, State building code officials, and the Department of Justice to coordinate development of *ADA Accessibility Guidelines* and ANSI.
- Issued a *Federal Register* notice requesting comments on the Access Board's five-year technical assistance/research plan and ADA related research projects.
- Acted on four petitions under the Administrative Procedures Act to review aspects of ADA regulations.
- Closed 153 Architectural Barriers Act (ABA) complaints between October 1, 1991, and September 30, 1992. Received 145 new cases during the year.
- Moved to our new offices at 1331 F Street, NW.

Rulemaking

ADA Rulemaking

After developing accessibility guidelines for buildings and facilities and for transportation vehicles under the Americans with Disabilities Act of 1990, the Access Board in 1992 proposed additional guidelines for certain State and local government facilities. The guidelines will ensure accessibility in terms of architecture, design, and communication in judicial, legislative, and regulatory buildings; detention and correctional facilities; publicly owned residential housing; and for streets and pedestrian walkways.

Title II prohibits discrimination in services, programs, and activities provided by State and local governments. The ADA requires the Access Board to issue guidelines for the Department of Justice to follow in developing its standards for new construction and alterations of State and local government facilities covered by title II of the ADA.

The Notice of Proposed Rulemaking for guidelines for State and local government facilities was published in the *Federal Register* on December 21, 1992, for a 90-day public comment period. Public hearings will be held in Charlotte, North Carolina; Denver, Colorado; St. Louis, Missouri; Washington, D.C.; and San Francisco, California. The final rule will be published in 1993.

The Department of Justice expects to amend its title II regulations to adopt the Access Board's *ADA Accessibility Guidelines* for State and local government facilities. Adopting essentially the same accessibility standards for titles II and III of the ADA will be a step toward consistency and uniformity of design in the public and private sectors throughout the country.

After the rulemaking is completed, the Access Board intends to adopt the *ADA Accessibility Guidelines* as the accessibility guidelines for federally financed facilities covered by the Architectural Barriers Act of 1968.



Petitions

During the year the Access Board received four petitions requesting changes to the *ADA Accessibility Guidelines*:

Automated Teller Machines (ATMs)

The American Bankers Association and two automated teller machine manufacturers requested that the reach range requirements for accessible ATMs be amended. The Access Board published a request for comments on the petition, held a public hearing for those affected by the rulemaking, and then published for public comment a proposed amendment setting out reach ranges for ATM controls for persons in wheelchairs. The Board received over 670 comments on the proposed amendment. A final rule will be published in the *Federal Register* in early 1993.



Detectable Warnings

The International Mass Retail Association asked the Board to conduct additional research on detectable warnings and to suspend certain provisions of the *ADA Accessibility Guidelines*. The Board granted an amended petition for rulemaking and will publish for public comment a notice of proposed rulemaking (NPRM) in the *Federal Register* in early 1993. The NPRM will propose to suspend the requirement for detectable warnings at places of public accommodation and commercial facilities until January 26, 1995, while a research project on detectable warnings is conducted.

Key Stations

The Metropolitan Transit Authority of New York and seven other transit agencies petitioned the Access Board and the Department of Transportation (DOT) about certain DOT regulations and *ADA Accessibility Guidelines* provisions relating to "key stations." The Board denied the petition for rulemaking to eliminate a key station retrofit requirement regarding communications for people with hearing impairments. The Department of Transportation will respond to other issues raised by the petition.

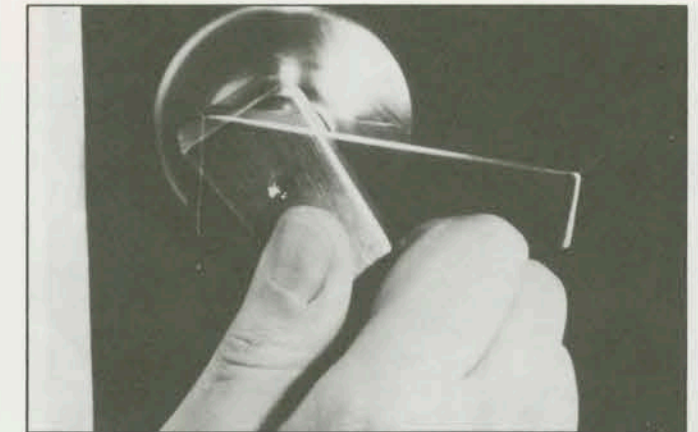
Small Bus and Van Door Height

Fair Access, Inc., requested that the *ADA Accessibility Guidelines*' 56-inch door height requirement for small buses and vans be changed because it conflicted with safety standards issued by the National Highway Traffic Safety Administration (NHTSA). The Access Board denied the petition without prejudice pending the outcome of NHTSA rulemaking on the matter.

Lead Agency in Outreach

As the only Federal agency exclusively involved with accessibility, the Access Board strives to reach out to various agencies and organizations to educate them about accessibility. Many activities and programs each year are directed toward enhancing awareness or educating various audiences about accessibility. Activities during the year included:

- Conducting a congressional briefing on the Board for the Senate in March. The Senate Bipartisan Work Group on Disability sponsored the event;
- Assisting the American Institute of Architects in producing a video teleconference on the ADA aimed at architects and code officials across the country. Comprised of three one-half-day segments, the teleconference reached approximately 7,000 people;
- Participating in ADA training conferences held by the Society of Environmental Graphic Designers, the Awards and Engraving Magazine, and the American Association of Museums;
- Participating in a televised conference on the ADA sponsored by the American Bar Association in May. The conference was broadcast to 70 sites around the country;
- Preparing a paper on accessibility laws and historic preservation for two national conferences sponsored by the Advisory Council on Historic Preservation, National Park Service, and National Conference of State Historic Preservation Offices. The conferences were attended by over 250 people from State historic preservation offices and State accessibility agencies.



- Participating in a meeting in Chicago with representatives of model building code groups, the ANSI Committee, State building code officials, and the Department of Justice to coordinate development of the *ADA Accessibility Guidelines* and ANSI A117.1;
- Arranging with the Building Owners and Managers Association and the National Association of Governors Committees on People with Disabilities to distribute the Access Board's new videos to their membership;
- Meeting with representatives of the National Association of Passenger Vehicle Operators to discuss the process of developing guidelines for boats and ferries.
- Creating and distributing two videotapes explaining the accessibility requirements of the *ADA Accessibility Guidelines* and the *Uniform Federal Accessibility Standards*.

Providing Technical Services

In fiscal year 1992, as in 1991, the major responsibility of the Office of Technical and Information Services was to develop *ADA Accessibility Guidelines*. At the same time, the Office provided technical assistance, developed and distributed publications, and provided training.

Technical Assistance

Under both the Architectural Barriers Act and Americans with Disabilities Act, the Access Board is to provide technical assistance for entities covered under the acts.

The Access Board's toll-free number, 1-800-USA-ABLE, is primarily intended to provide technical assistance from the agency's accessibility specialists. They handled approximately 19,000 calls during the year. That's an increase of 3,000 over the 16,000 calls that came in last year. Additional calls came in on other agency phone lines.

The staff of accessibility specialists responded to a full range of questions such as:

- What triggers the requirement for visual alarms and in what areas of a facility are they to be placed?
- Must accessible parking spaces be provided in each parking lot in a facility or can they be grouped?
- What special provisions are there for elevators in existing buildings when alterations are made?
- Does the definition of "technically infeasible" include cost considerations?
- Is a doctor's office a medical care facility? How is parking for doctors' offices calculated?

Publications

Detectable Warnings, the first of what will be an ongoing series of technical assistance bulletins on issues commonly raised in phone calls from the public, was published. Other bulletins that have been completed include subjects such as visual alarms and text telephones.



A major publication for the year was the *ADA Accessibility Checklist*, which allows complete accessibility assessments of buildings and facilities.

To help understand the background, rationale, and application of the *ADA Accessibility Guidelines for Transportation Vehicles* to transportation systems, nine manuals were published:

- *Buses, Vans, and Systems*
- *Rapid Rail Vehicles and Systems*
- *Light Rail Vehicles and Systems*
- *Commuter Rail Cars and Systems*
- *Intercity Rail Cars and Systems*
- *Over-the-Road Buses and Systems*
- *Automated Guideway Transit Vehicles and Systems*

- *High-Speed Rail Cars, Monorails, and Systems*
- *Trams, Similar Vehicles, and Systems*

Over 32,000 copies of *ADA Accessibility Guidelines* were distributed. Approximately 10,500 accessibility information packets (nearly 41,000 copies of 32 publications) also were distributed.

Training

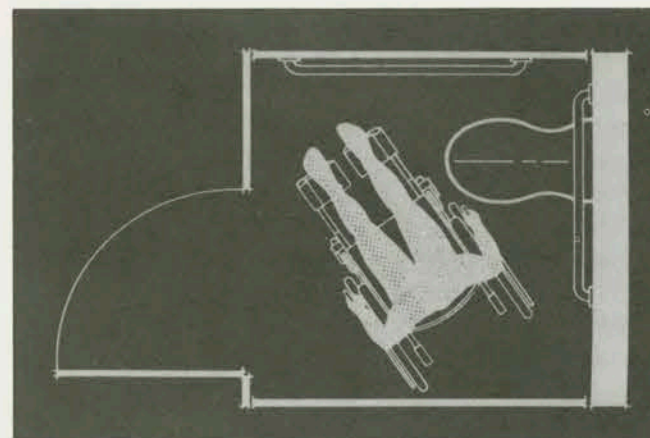
The Access Board increased its efforts to reach and educate more people and institutions covered by the ADA.

After receiving legislative authority, the Access Board adopted a policy, consistent with Federal law and regulations, of charging for training. The agency was reimbursed for most of its training sessions, approximately half of which were held outside the Washington, D.C., metropolitan area.

Sponsored primarily by professional, industry, and trade organizations, the Access Board provided *ADA Accessibility Guidelines* or *Uniform Federal Accessibility Standards* training to 62 organizations. Among them were:

- American Bar Association
- American Institute of Architects
- American Insurance Association
- American Marketing Association
- American Public Transit Association
- Building Owners and Managers Association
- Community Transportation Association of America
- Department of Justice and National Institute for Disability Research and Rehabilitation grantees conducting ADA technical assistance projects
- Door Hardware Consultants and Manufacturers

- Eastern Paralyzed Veterans Association
- Institutional and Municipal Parking Congress
- International Congress of Building Code Officials
- International Facility Management Association
- National Association of Protection and Advocacy Systems
- National Conference of States on Building Codes and Standards
- National Easter Seal Society
- National League of Cities
- Project ACTION
- Self Help for Hard-of-Hearing People
- Southern Building Code Congress International
- Special Libraries Association
- University of Michigan
- Virginia Law Foundation
- Food Marketing Institute
- Bell Communications Research
- Equal Employment Opportunity Commission
- National Park Service
- Gallaudet University
- Prince George's County (MD) Commission on Persons with Disabilities
- American Society of Environmental Graphic Designers
- Awards and Engraving Magazine
- American Association of Museums
- International Association for Personnel Employment Security
- American Society of Airport Executives



The Access Board also participated in televised conferences on the ADA sponsored by the American Bar Association and the American Institute of Architects. The programs were broadcast to over 75 sites around the country.

Slides, Videos

Several video and slide presentations were developed during the year:

Two training videos, one on the *UFAS* standards and the second on the *ADA Accessibility Guidelines*, are being distributed. The ADA video contains an overview of the history and context of accessibility regulation. It covers technical provisions of the *ADA Accessibility Guidelines*, with particular application to new construction and alterations under title III of the ADA. These videotapes were distributed to the members of the Building Owners and Managers Association and the National Association of Governors Committees for People with Disabilities.

A slide presentation and script were created for briefings on the organization, authority, and mandate of the Access Board. It has been shown to a congressional audience and to a delegation from the Netherlands who were interested in implementation of the ADA.

Primarily geared to transit planners and specifications writers, transportation slides and a workbook were assembled to provide a one and a half day course covering all facets of transit accessibility. A private firm, with funding from the Federal Transit Administration, is utilizing the materials the Office of Technical and Information Services developed and is conducting training on transit access at ten sites throughout the country.

Research

Each year the Access Board devotes a portion of its budget to research various accessibility issues to gain more information needed to develop or refine its accessibility requirements or to develop additional technical assistance materials. In 1992 projects were sponsored on:

- quiet areas in restaurants;
- automatic doors;
- assembly area accessibility; and
- communications in transit facilities for persons with hearing impairments and persons with visual impairments.

In September 1992 the Board published its proposed five-year research plan. The Board sought information on related technical and research activities being planned or sponsored by other public and private organizations. It also sought public comment on its research priorities for future years.

Information from the public's responses will be used to focus future Board research so it is not duplicative. The information will also be used in the agency's periodic review and updating of its *ADA Accessibility Guidelines* and in its efforts to develop new technical and scoping provisions. This ensures that the guidelines remain consistent with technological advances, research findings, changes in model codes and standards, and continue to meet the needs of persons with disabilities.

Enforcing the Architectural Barriers Act

ABA Compliance and Enforcement Activities

The Access Board enforces the Architectural Barriers Act (ABA) of 1968. This act requires that buildings and facilities be accessible if, since 1968, they were designed, built, or altered with certain Federal funds or leased for occupancy by Federal agencies. The Board does not enforce the Americans with Disabilities Act (ADA); these enforcement responsibilities are shared by several other Federal agencies.

Overview

The number of ABA cases opened in fiscal year (FY) 1992 was 145 (see Figure 1 below), compared to 153 in FY 1991. These bring the overall number of complaints filed with the Access Board since complaint records began in FY 1977 to 2,613. About 95% of these cases were closed by the end of FY 1992. In 41% of the closed cases, the responsible agency took corrective actions to remove the barrier. In 7% of the cases, no violation of the applicable accessibility standards was found. The remaining

**Status of Complaints by Fiscal Year Received
(FY 1977 — FY 1992)**

FY	Total	Complaints Received		Monitoring Corrective action	Intent To Close Letter sent	Complaints Closed					Total Closed By FY Closed
		% Change From Previous FY	Under Investi- gation			Total	% Total Received	Closed For:			
								Corrective Action	No Juris- diction	No Viola- tion	
1977	100		0	0	0	100	100.0%	50	44	6	49
1978	155	55.0%	0	0	0	155	100.0%	60	83	12	141
1979	176	13.5%	0	0	0	176	100.0%	92	78	6	175
1980	160	-9.1%	0	0	0	160	100.0%	63	86	11	137
1981	106	-33.8%	0	0	0	106	100.0%	39	62	5	96
1982	119	12.3%	0	0	0	119	100.0%	58	52	9	73
1983	129	8.4%	0	0	0	129	100.0%	60	55	14	123
1984	233	80.6%	0	2	0	231	99.1%	86	135	10	96
1985	249	6.9%	0	0	1	248	99.6%	83	148	17	236
1986	91	-63.5%	1	0	0	90	98.9%	35	49	6	101
1987	217	138.5%	2	1	0	214	98.6%	109	86	19	102
1988	200	-7.8%	1	2	0	197	98.5%	62	112	22	266
1989	176	-12.0%	9	4	0	163	92.6%	64	91	8	317
1990	204	15.9%	11	13	0	180	88.2%	77	92	11	210
1991	153	-25.0%	9	7	0	137	89.5%	48	76	13	200
1992	145	-5.2%	56	11	8	70	48.3%	30	36	4	153
Total	2613		89	40	9	2475	94.7%	1016 (41.1%)	1285 (51.9%)	173 (7.0%)	

Figure 1

52% of the cases were closed because the Board had no jurisdiction. Usually this is due to the lack of Federal funds which trigger ABA requirements, or the design, construction, alteration, or lease took place before ABA regulations were issued in 1969.

It is noteworthy that over the past five years the percentage of cases closed for the best reason — the removal of barriers, has increased from less

than 34% in FY 1988 to over 41% at the end of FY 1992. Also, it is important to add that in over 25% of all corrective action closures, the actions taken were voluntary. That is, without legal action by the Board, the responsible agency or organization chose to eliminate the barrier and improve the accessibility of its building or facility for all people.

Complaints Received by State
Fiscal Year 1992

Alabama	7	Louisiana	0	Oklahoma	5
Alaska	4	Maine	3	Oregon	0
Arizona	3	Maryland	1	Pennsylvania	3
Arkansas	1	Massachusetts	4	Puerto Rico	0
California	6	Michigan	6	Rhode Island	0
Colorado	1	Minnesota	0	South Carolina	0
Connecticut	1	Mississippi	0	South Dakota	0
Delaware	0	Missouri	8	Tennessee	0
Dist. of Columbia	5	Montana	4	Texas	4
Florida	10	Nebraska	2	Utah	2
Georgia	0	Nevada	2	Vermont	0
Hawaii	1	New Hampshire	1	Virgin Islands	0
Idaho	2	New Jersey	3	Virginia	2
Illinois	4	New Mexico	0	Washington	3
Indiana	14	New York	16	West Virginia	2
Iowa	0	North Carolina	2	Wisconsin	1
Kansas	0	North Dakota	0	Wyoming	4
Kentucky	5	Ohio	3		
TOTAL 145					

Figure 2

Complaints Received and Closed
by Fiscal Year

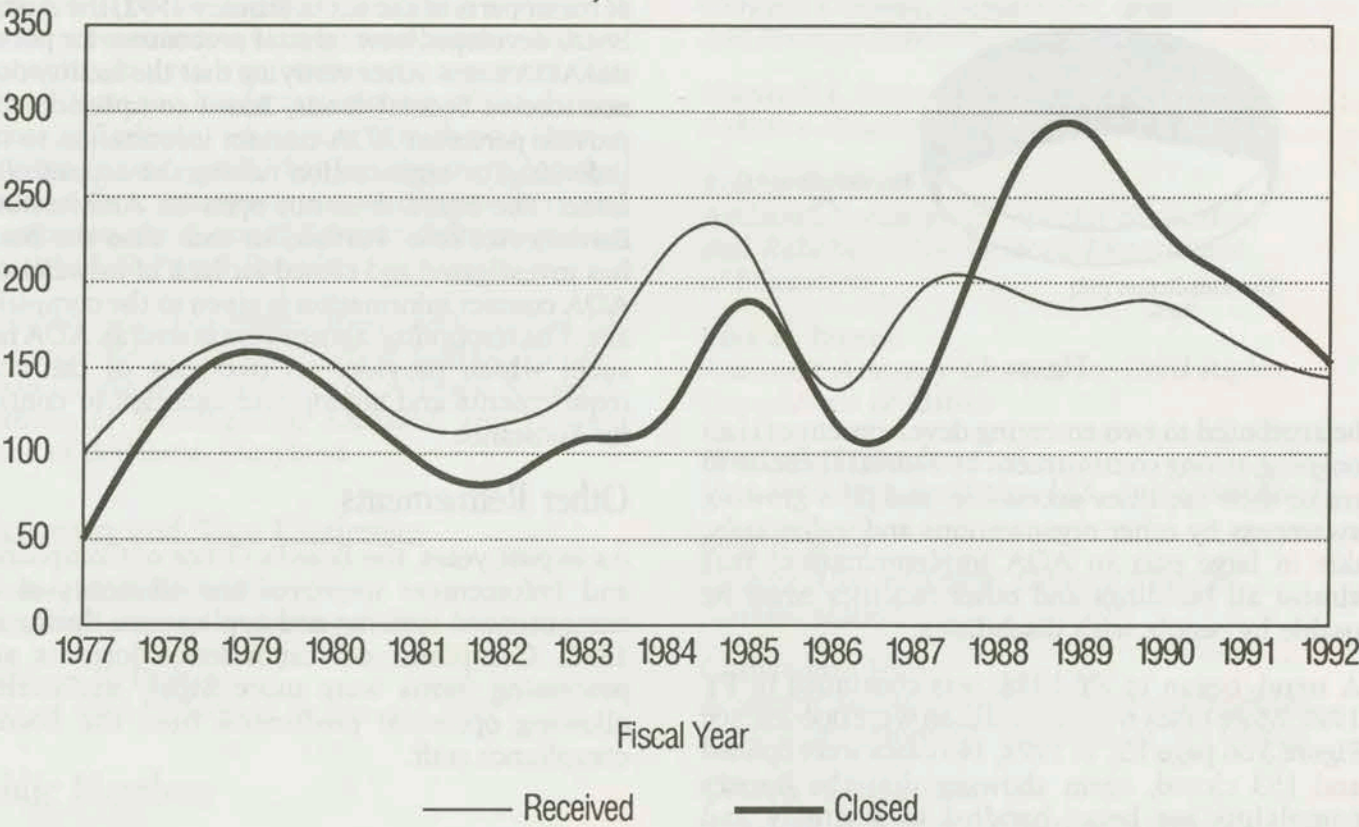


Figure 3

1992 Cases

The 145 new cases opened in FY 1992 concerned facilities in 35 States and the District of Columbia. The States with the most ABA cases were New York with 16, Indiana with 14, and Florida with 10 (see Figure 2 on page 14). The types of facilities predictably included Federal buildings, military facilities, and post offices. More surprisingly however, the cases also addressed airport terminals; county courthouses; high schools, colleges, and universities; historic sites; boating marinas; buildings on Native American reservations; facilities in national and State parks and in national forests; and correctional facilities and prisons.

A total of 153 complaints, received in FY 1992 or in preceding years, were closed in FY 1992. In 38% of these closed cases, the Board had no jurisdiction, and in 7% there was no violation of the applicable standard (see Figure 4 on page 16). The rest of the cases, well over half (55%), were closed because actions were taken to remove the barriers.

This figure is very significant. This is the highest percentage ever of cases closed for corrective action. Further, for only the third time in the history of the Board's compliance program, a majority of closed cases were closed for corrective action. This can

Cases Closed During FY 1992

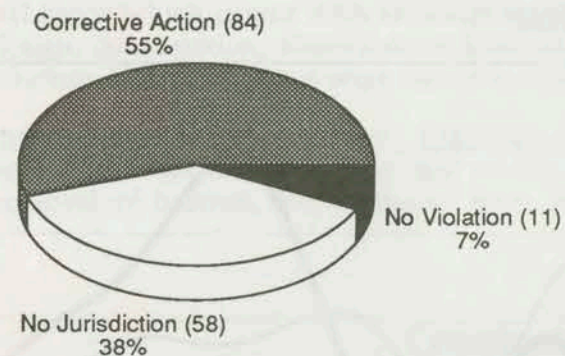


Figure 4

be attributed to two emerging developments: (1) an ongoing, strong commitment by Federal agencies to make their facilities accessible; and (2) a growing awareness by other organizations and individuals, due in large part to ADA implementation, that almost all buildings and other facilities must be usable by people with disabilities.

A trend, begun in FY 1988, was continued in FY 1992. More cases were closed than were opened (see Figure 3 on page 15). In 1992, 145 cases were opened and 153 closed, again showing that the Board's complaints are being handled in a timely and effective way.

ADA Referral Procedures

Following passage of the ADA and implementation of major parts of the act in January 1992, the Access Board developed new referral procedures for potential ADA cases. After verifying that the facility does not receive Federal funds, Board compliance staff provide pertinent ADA contact information to the individual or organization raising the accessibility issue. The Board does not open an Architectural Barriers Act case. Further, in each case the Board has investigated and closed for lack of jurisdiction, ADA contact information is given to the complainant. The responding agency also is sent an ADA fact sheet which provides an overview of the act's requirements and appropriate agencies to contact for assistance.

Other Refinements

As in past years, the Board's Office of Compliance and Enforcement improved the efficiency of its computerized systems and applications during FY 1992. Complaint correspondence formats and processing forms were more highly automated, allowing optimum production from the Board's compliance staff.

Board Members—1992

Authorized under section 502 of the Rehabilitation Act of 1973 (Public Law 93-112), the Access Board has a governing board of 25 members. The President appoints 13 public members, at least a majority of whom must be individuals with a disability, to four-year terms or until a replacement is appointed. The other 12 are the heads or designees of the departments of Defense, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, Transportation, Veterans Affairs, and Commerce; the General Services Administration; and the U. S. Postal Service.

Members who completed their terms during the year were Robert C. Brostrom of Fairfax, Virginia; Susan Castle Webb of Phoenix, Arizona; Robert A. Cothren of Birmingham, Alabama; and Howard Stone of Bethesda, Maryland.

Chairman and Vice Chairman

Gordon H. Mansfield
Elected Chairman in January 1991

Kathleen K. Parker
Elected Vice Chairman in January 1991

Public Members

Stephen B. Bull	Washington, D.C.
Perry C. Diaz, Jr.	Sacramento, California
Scott M. Duncan	Houston, Texas
Fritz Edmunds, Jr.	Overland Park, Kansas
Robert T. Kelly, Jr.	Miami Springs, Florida
S. Craig Kiser	Tallahassee, Florida
William H. McCabe	Winsted, Connecticut
Tracy J. Mueller	Greeley, Colorado
Kathleen K. Parker	Northbrook, Illinois
Peggy Pinder	Grinnell, Iowa
R. Jack Powell	Sanford, Florida
Glen R. Stotler	Berkeley Springs, West Virginia

Federal Members

Michael J. Astrue
General Counsel, Department of Health and Human Services

Marshall J. Breger
Solicitor of Labor, Department of Labor

Robert Davila
Assistant Secretary for Special Education and Rehabilitative Services, Department of Education

John R. Dunne
Assistant Attorney General for Civil Rights, Department of Justice

Mitchell H. Gordon
Vice President, Facilities, U.S. Postal Service

John P. Hiler
Deputy Administrator, General Services Administration

Christopher Jehn
Assistant Secretary of Defense (Force Management and Personnel), Department of Defense

Gordon H. Mansfield
Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development

John E. Schrote
Acting Assistant Secretary for Policy, Management and Budget, Department of the Interior

Jeffrey N. Shane
Assistant Secretary for Policy and International Affairs, Department of Transportation

Jo Ann K. Webb
Assistant Secretary for Policy and Planning, Department of Veterans Affairs

Organization

The 25-member board usually meets six times a year to conduct the agency's business, establish policy, and set directions. The Board is organized into three committees:

Executive Committee oversees routine policy and management functions, and compliance and enforcement operations;

Technical Programs Committee is responsible for the agency's research and technical assistance programs; and

Planning and Budget Committee develops the Board's budget and other plans to carry out Board objectives.

The Board staff, headed by the executive director who reports directly to the Board, is organized into four offices:

Office of the Executive Director develops and implements agency policies and procedures, and provides administrative and logistical support for the agency;

Office of Compliance and Enforcement investigates and resolves complaints concerning compliance of federal and federally-funded buildings and facilities with the Architectural Barriers Act of 1968, and monitors corrective action;

Office of the General Counsel provides legal services for the agency and initiates formal legal proceedings to enforce the Architectural Barriers Act when informal resolution is not achieved; and

Office of Technical and Information Services provides government agencies, public and private organizations, and individuals with technical information and training on the elimination of architectural, transportation, communication, and attitudinal barriers.

Legislative Mandates

An independent Federal agency, the Access Board has major responsibilities for the 1968 Architectural Barriers Act and the 1990 Americans with Disabilities Act.

Rehabilitation Act of 1973

Created by the Rehabilitation Act of 1973, the Access Board is charged with ensuring that certain facilities designed, constructed, leased, or altered with Federal funds since September 1969 are accessible to and usable by person with disabilities. Specific legislative responsibilities are to:

- (1) ensure compliance with standards prescribed under the Architectural Barriers Act of 1968 (Public Law 90-480);
- (2) establish minimum guidelines and requirements for standards issued under the Architectural Barriers Act;
- (3) develop standards and provide technical assistance to any entity affected by regulations issued under Title V of the Rehabilitation Act of 1973; and
- (4) provide technical assistance on the removal of barriers and answer other questions on architectural, transportation, communication, and attitudinal barriers affecting persons with disabilities.

Americans with Disabilities Act

Under the Americans with Disabilities Act (Public Law 101-336), signed into law in July 1990, the Access Board acquired additional new responsibilities to:

- (1) develop accessibility guidelines for transit facilities, transit vehicles, commercial facilities and public accommodations, children's environments, and recreation facilities;
- (2) implement a technical assistance plan on the Board guidelines for entities covered under the transportation and public accommodations titles of ADA; and
- (3) develop and publish technical assistance manuals for those entities covered under titles II and III (transportation and public accommodations) of ADA.

Thursday
July 15, 1993

Part 1191

Part IV

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Department of Transportation

Office of the Secretary
49 CFR Part 37

**Americans With Disabilities Act
Accessibility Guidelines; Accessible
Automated Teller Machines and Fare
Vending Machines; Joint Final Rule**

**ARCHITECTURAL AND
TRANSPORTATION BARRIERS
COMPLIANCE BOARD**

36 CFR Part 1191

[Docket No. 92-1]

RIN 3014-AA14

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket 48463; Notice 92-22]

RIN 2105-AB97

**Americans With Disabilities Act
Accessibility Guidelines; Accessible
Automated Teller Machines and Fare
Vending Machines**

AGENCIES: Architectural and
Transportation Barriers Compliance
Board and Department of
Transportation.

ACTION: Joint final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) and the Department of Transportation are issuing a final rule amending the reach range requirement for automated teller machines and fare vending machines under the Americans With Disabilities Act Accessibility Guidelines (ADAAG). The rule sets out the reach ranges for controls when a person using a wheelchair can make a forward approach only, a parallel approach only, or both a forward and parallel approach to a machine. The rule includes a table of reach depths and maximum heights for the placement of controls where the controls are recessed or the installation of a surround in front of the machine results in a reach depth of more than 10 inches to any control from a parallel approach.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT:
Access Board: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004-1111. Telephone (202) 272-5434 (voice) or (202) 272-5449 (TDD).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., room 10424, Washington, DC 20590. Telephone (202) 366-9306 (voice) or (202) 755-7687 (TDD).

The telephone numbers listed above are not toll-free numbers.

This document is available in alternate formats (cassette tape, braille, large print, or computer disc) from the Access Board upon request.

SUPPLEMENTARY INFORMATION:

Background

Under the Americans with Disabilities Act of 1990 (ADA), the Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards for newly constructed and altered buildings and facilities covered by the Act.¹ The Access Board issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. See 36 CFR part 1191, appendix. The Department of Justice and the Department of Transportation adopted ADAAG as the accessibility standards for newly constructed and altered buildings in regulations implementing certain titles of the ADA. See 28 CFR part 36, appendix A; 49 CFR part 37, appendix A.

As originally adopted, ADAAG requires that accessible automated teller machines (ATMs) provide "both a forward and side reach to the unit allowing a person in a wheelchair to access the controls and dispensers."² See ADAAG 4.34.3. The provision was intended primarily to address the fact that the controls on ATMs are typically recessed or set back into the wall or the unit for privacy and security purposes.

¹ The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act of 1973, as amended, whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of whom are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

² The dimensions for a forward and side reach for wheelchair users are contained in ADAAG 4.2.5 and 4.2.6 and are taken from the "American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People" (ANSI A117.1-1980). The maximum forward reach permitted is 48 inches above the floor. See ADAAG 4.2.5 and Figure 5(a). If the forward reach is over an obstruction, clear floor space must be provided under the obstruction that equals or exceeds the reach depth for a maximum of 25 inches; and if the reach depth is between 20 inches and 25 inches, the maximum forward reach permitted is 44 inches above the floor. See ADAAG 4.2.5 and Figure 5(b). The maximum side reach permitted is 54 inches above the floor for a maximum reach depth of 10 inches. See ADAAG 4.2.6 and Figure 6(b). If the side reach is over an obstruction, the maximum side reach permitted is 46 inches. See ADAAG 4.2.6 and Figure 6(c).

The installation of fixtures called "surrounds" in front of ATMs, which contain writing counters and bins for envelopes and waste paper, create a further obstruction that increases the reach depth to the controls.

In February 1992, two leading ATM manufacturers, NCR Corporation and InterBold, filed a petition for rulemaking with the Access Board claiming that their new ATMs cannot comply with "both a forward and side reach" and requested that ADAAG be amended to permit "either a forward or side reach." The American Bankers Association joined in the petition and raised questions regarding the effect that both a forward and side reach requirement would have on other user groups, especially persons with vision impairments, persons who have difficulty bending or stooping, and elderly persons.

The Access Board requested public comments on the matter and held a public hearing in May 1992. See 57 FR 19472 (May 6, 1992). An ATM surround manufacturer, Companion Systems, recommended that ADAAG include a table of reach depths and maximum heights for controls based on a straight line interpolation connecting the points between the maximum side reach with and without an obstruction from a parallel approach to address the increased reach depth resulting from recessed controls and the installation of surrounds in front of ATMs. In September 1992, the Access Board issued a notice of proposed rulemaking (NPRM) to amend the reach range requirement for ATMs by including such a table in ADAAG in place of requiring "both a forward and side reach" to the controls. See 57 FR 41006 (September 8, 1992).

The Department of Transportation issued a NPRM in November 1992 to amend its ADA regulations in several respects, including conforming the standards for transportation facilities to incorporate the proposed amendment to the reach range requirement for ATMs. See 57 FR 54210 (November 17, 1992). The amendment is relevant to transportation facilities because fare vending machines are required to comply with the same requirements as ATMs. See ADAAG 10.3.1(7).

The Department of Justice also issued a NPRM in April 1993 to amend its regulations on nondiscrimination on the basis of disability by public accommodations and in commercial facilities covered by title III of ADA (28 CFR part 36) to incorporate the proposed amendment to the reach range requirement for ATMs. See 58 FR 17558 (April 5, 1993). The Department of

Justice will issue a separate final rule notice in the *Federal Register* regarding the amendment of its regulations.

Summary of Rule and Comments

The Access Board and the Department of Transportation are adopting as a final rule the proposed amendment to the reach range requirement for ATMs and fare vending machines.³ The technical provisions in ADAAG 4.34 are reorganized to more clearly set out the clear floor space and reach range requirements. The scoping provisions in ADAAG 4.1.3 (20) for buildings and facilities in general, and in ADAAG 10.3.1 (7) for transportation facilities in particular, are also revised to correctly reference the reorganized technical provisions in ADAAG 4.34.

ADAAG 4.34.1 provides that each ATM required to be accessible by the scoping provision in ADAAG 4.1.3 (20) must be on an accessible route and comply with the other requirements in ADAAG 4.34.2 through 4.34.5. ADAAG 10.3.1 (7) provides for fare vending machines in transportation facilities also to be on an accessible route and to comply with ADAAG 4.34.2 through 4.34.5.

ADAAG 4.34.2 requires that ATMs be located so that clear floor space complying with ADAAG 4.2.4 (i.e., 30 inches by 48 inches minimum with one full unobstructed side adjoining or overlapping an accessible route) is provided to allow a wheelchair user to make a forward approach, a parallel approach, or both to the machine.⁴ Since ATMs are usually located in the lobby of buildings or installed through the exterior wall of buildings, there is generally adequate clear floor space for a wheelchair user to make a forward or parallel approach.

ADAAG 4.34.3 sets out the reach ranges for the various controls used to operate an ATM, including card readers, keypads, video display screen function keys, deposit slots, cash and receipt dispensers, and statement printers. ADAAG 4.34.3 (1) provides that if only a forward approach is possible (e.g., ATM located in narrow alcove), the operable parts of all the controls must

³ The Department of Transportation will be issuing a separate notice in the *Federal Register* regarding the final action taken on the other amendments proposed to its ADA regulations in November 1992.

⁴ For a parallel approach, the clear floor space is positioned with the longer dimension (48 inches) parallel and adjacent to the object to be reached. See ADAAG 4.2.4 and Figure 4(c). For a forward approach, the clear floor space is positioned with the shorter dimension (30 inches) parallel and adjacent to the object to be reached. See ADAAG 4.2.4 and Figure 4(b). The various approaches are illustrated in the NPRM at 57 FR 41011, Figure 2 (September 8, 1992).

be placed within the forward reach range specified in ADAAG 4.2.5 (i.e., 48 inches maximum height for a reach depth up to 20 inches and 44 inches maximum height for a reach depth between 20 inches and 25 inches; and clear floor space provided under the ATM that equals or exceeds the reach depth for a maximum of 25 inches).

ADAAG 4.34.3 (2)(a) and (b) specify the reach ranges if only a parallel approach is possible (e.g., ATM located in narrow corridor). Where the reach depth to the operable parts of all controls is not more than 10 inches, the maximum height for the placement of controls is 54 inches. Where the reach depth to the operable parts of any control is more than 10 inches, the table of reach depths and maximum heights in ADAAG 4.34.3 (2)(b) is to be used. Generally, for each additional inch of reach depth beyond 10 inches, the height of the controls would be lowered one-half inch below the 54 inch maximum height, with the controls being lowered an additional one-half inch at reach depths greater than 13 inches and 20 inches due to rounding-off numbers.

ADAAG 4.34.3 (3) provides that if both types of approaches are possible, the operable parts of all controls must be placed within at least one of the reach ranges in ADAAG 4.34.3 (1) or (2). Thus, if there is adequate clear floor space for a wheelchair user to make a forward or parallel approach, at a minimum the controls must be reachable from at least one of the approaches.

ADAAG 4.34.3 (4) requires that where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided must comply with the applicable reach ranges.

ADAAG 4.34.3 also contains an exception for ATMs which are equipped with an alternate control that can perform that same function in a substantially equivalent manner. Under the exception, only one of the controls needed to perform the function is required to comply with the reach range requirement. If the controls are identified by tactile markings, such markings must be provided at both controls so that the markings can be read by persons with vision impairments from a standing or sitting position.

ADAAG 4.34.4 regarding the operation of controls and ADAAG 4.34.5 regarding equipment for persons with vision impairments are unchanged from existing ADAAG. Only the section numbers have been changed as a result of the amendments discussed above.

NCR Corporation, InterBold, and the banking industry supported the proposed amendment to the reach range requirement.⁵ The amendment will allow banks to choose among available ATM models and surround designs and, based upon their combined reach depth, install the ATM and surround so that the controls are placed at the appropriate height. The amendment also provides flexibility for banks when relocating older ATMs to lower traffic areas and will ensure that the market for used ATMs remains available.

Organizations representing individuals with disabilities expressed concern that the forward and side reach range requirements do not accommodate all wheelchair users and recommended that the Board conduct additional research in this area. For a summary of earlier research, see 57 FR 41012 (September 8, 1992). Some recommended that ADAAG not be amended until additional research is conducted. Others noted that additional research is also needed on equipment for persons with vision impairments, mounting heights for video display screens and related issues, and recommended that ATM manufacturers not be required to redesign their products to meet one requirement and then have to redesign their products again to meet another set of requirements. Rather, they recommended that accessibility requirements for ATMs be imposed on the industry as a "package" so that any required changes can be incorporated in a single redesign. Congress has expressed similar concern and has recommended that "when considering accessibility requirements for automated teller machines (ATMs) under the ADA, to take into account the fact that these sophisticated electronic systems are more difficult to modify and design than other vending machines because of their reliance on computers and their special security considerations." H. Rept. 102-918, at 34.

The Little People of America also commented on the amendment. According to the Little People of America, there are over 1.5 million Americans who are short statured. Their adult height ranges from 2 feet 6 inches to 4 feet 10 inches. For many of these individuals, the controls on ATMs are completely out of their reach. The Little People of America recommended that ADAAG not be amended without

⁵ The American Bankers Association, Independent Bankers Association of America, Savings and Community Bankers of America, Credit Union National Association, California Bankers Association, and about a dozen banks submitted comments in support of the amendments.

conducting additional research on making ATMs accessible to persons who are short statured. About 700 members and friends of the Little People of America sent letters reiterating these points.

The Access Board recognizes that any reach range requirement must take into account the needs of various user groups, including persons who use wheelchairs, persons who have difficulty bending or stooping, persons who are short statured, and persons with vision impairments who may read tactile markings identifying equipment controls. One way to accommodate these various groups is to require two of each type of equipment to be provided at each location, with one placed at a higher height and one placed at a lower height. Such a requirement would be very costly to implement for ATMs. Another way to accommodate these various groups is to provide technological alternatives for operating equipment that can be used by persons who are not accommodated by established reach ranges. NCR Corporation and InterBold reported that they are investigating several technological alternatives for operating ATMs, including remote devices, voice activation devices, and contactless cards.

In addition to reach ranges for controls, the Access Board requested comment on the viewing height and angle for video display screens. The NPRM noted that the American National Standards Institute (ANSI) A117 Committee and California have established or proposed accessibility provisions for video display screens. All the ATM manufacturers objected to the ANSI provision because it would require the screen to be positioned almost horizontally to be viewable from a standing position which would be difficult for a wheelchair user to read. The ATM manufacturers preferred the California provision because it addresses both viewing height and angle. InterBold stated that its ATMs comply with the California provision.

The ANSI A117 Committee has recently established a task force on ATMs to further examine a variety of issues related to making the machines readily accessible to and usable by persons with various disabilities. The Access Board is a member of the task force. The task force includes representatives from organizations of persons with mobility impairments and vision impairments, ATM manufacturers, and banks. The Little People of America have also been invited to participate in the task force.

The task force will be investigating such issues as access for person with vision impairments, reach ranges, viewing height and angle of video display screens, and technological alternatives for addressing these issues.

The Access Board also plans to sponsor research in fiscal year 1994 on clear floor space, maneuvering clearances, and reach ranges for persons using power wheelchairs and three wheeled scooters. See the Access Board's notice on ADA research priorities for fiscal years 1993 and 1994 published in the *Federal Register* on July 9, 1993 (58 FR 37058). Persons using power wheelchairs are more likely to have a restricted reach range due to limited upper body mobility. The research project will also include a literature review on reach ranges focusing on the population that was tested in earlier studies and the extent to which those studies examined the manipulation of controls at different heights and reach depths. Based on the results of the literature review, the Access Board may sponsor additional research on reach ranges.

In light of the further work being done by the ATM task force sponsored by the ANSI A117 Committee and the additional research planned for fiscal year 1994, the Access Board does not intend to propose any additional requirements for ATMs at this time.

The Department of Transportation received several comments on the application of the proposed amended reach range requirement for ATMs to fare vending machines. Nine commenters supported the proposed amendment as applied to fare vending machines. Five commenters said that the purpose and design of fare vending machines were different enough from those of ATMs to warrant a separate provision, at least with respect to some specifications. One commenter said that, if the reach range requirement is amended, existing models of fare vending machines which it had installed should be grandfathered so that retrofit was not necessary. Several comments recommended that additional provisions such as a voice synthesizer system was needed on fare vending machines for persons with vision impairments.

The Access Board and the Department of Transportation believe that the proposed amended reach range requirement for ATMs is reasonable for fare vending machines as well. The operations which consumers must perform on ATMs and fare vending machines are similar enough that the same requirements should apply to both

machines. Those commenters who said that the two types of machines should have different requirements did not provide sufficient information on which to base separate specifications. The Department of Transportation would apply the current "grandfathering" provisions in its ADA regulations (49 CFR 37.9) to fare vending machines that meet the existing ADAAG requirements in the same way as that section applies to other features of transportation facilities. As for provisions for persons with vision impairments, ADAAG 10.3.1(7) already requires compliance with ADAAG 4.34.5 which specifies that all instructions and information needed to use the machine must be accessible to and usable by persons with vision impairments. Specifying a voice synthesizer system for fare vending machines does not seem necessary and, in any event, is beyond the scope of the NPRM.

Regulatory Analyses and Notices

The Access Board and the Department of Transportation have independently determined that this final rule is not a major rule under Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is a significant rule under the Department of Transportation's Regulatory Policies and Procedures since it amends the agency's ADA regulations, which are a significant rule. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board and the Department of Transportation hereby independently certify that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The Access Board and the Department of Transportation have also independently determined that there are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment under Executive Order 12612.

Text of Final Common Rule

Appendix A to this part is amended by revising paragraph (20) in section 4.1.3, by revising sections 4.34 and 4.34.1 through 4.34.4, by adding section 4.34.5, and by revising paragraph (7) in section 10.3.1. Pages 10, 58, and 69 of appendix A are republished with the revisions included and page 58A of appendix A is added to read as follows:

BILLING CODE 8150-01-P; 4910-02-P

4.1.3 Accessible Buildings: New Construction

in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) in places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more machines are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions.

Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that

4.33.5 Access to Performing Areas

4.33.5 Access to Performing Areas.

An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems.

If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems.

Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.

4.34 Automated Teller Machines.

4.34.1 General. Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.

4.34.2 Clear Floor Space. The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach, or both, to the machine.

4.34.3 Reach Ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 in (255 mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest

protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height above the finished floor or grade shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 in (255 mm). Where the reach depth to the operable parts of any control as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height above the finished floor or grade shall be as follows:

Reach Depth		Maximum Height	
In	Mm	In	Mm
10	255	54	1370
11	280	53½	1360
12	305	53	1345
13	330	52½	1335
14	355	51½	1310
15	380	51	1295
16	405	50½	1285
17	430	50	1270
18	455	49½	1255
19	485	49	1245
20	510	48½	1230
21	535	47½	1205
22	560	47	1195
23	585	46½	1180
24	610	46	1170

(3) Forward and Parallel Approach. If both a forward and parallel approach are possible, operable parts of controls shall be placed within at least one of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

EXCEPTION: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls. Controls for user activation shall comply with 4.27.4.

4.35 Dressing and Fitting Rooms

4.34.5 Equipment for Persons with Vision Impairments. Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.

4.35 Dressing and Fitting Rooms.

4.35.1 General. Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.

4.35.2 Clear Floor Space. A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.

4.35.3 Doors. All doors to accessible dressing rooms shall be in compliance with section 4.13.

4.35.4 Bench. Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3. Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.

4.35.5 Mirror. Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.

NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

10.3 Fixed Facilities and Stations

(7)* Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall comply with 4.34.2, 4.34.3, 4.34.4, and 4.34.5. At each accessible entrance such devices shall be located on an accessible route. If self-service fare collection devices are provided for the use of the general public, at least one accessible device for entering, and at least one for exiting, unless one device serves both functions, shall be provided at each accessible point of entry or exit. Accessible fare collection devices shall have a minimum clear opening width of 32 inches; shall permit passage of a wheelchair; and, where provided, coin or card slots and controls necessary for operation shall comply with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor and shall comply with 4.13. Where the circulation path does not coincide with that used by the general public, accessible fare collection systems shall be located at or adjacent to the accessible point of entry or exit.

(8) Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning. Such detectable warnings shall comply with 4.29.2 and shall be 24 inches wide running the full length of the platform drop-off.

(9) In stations covered by this section, rail-to-platform height in new stations shall be coordinated with the floor height of new vehicles so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 5/8 inch under normal passenger load conditions. For rapid rail, light rail, commuter rail, high speed rail, and intercity rail systems in new stations, the horizontal gap, measured when the new vehicle is at rest, shall be no greater than 3 inches. For slow moving automated guideway "people mover" transit systems, the horizontal gap in new stations shall be no greater than 1 inch.

EXCEPTION 1: Existing vehicles operating in new stations may have a vertical difference with respect to the new platform within plus or minus 1-1/2 inches.

EXCEPTION 2: In light rail, commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference

requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38 shall suffice.

(10) Stations shall not be designed or constructed so as to require persons with disabilities to board or alight from a vehicle at a location other than one used by the general public.

(11) Illumination levels in the areas where signage is located shall be uniform and shall minimize glare on signs. Lighting along circulation routes shall be of a type and configuration to provide uniform illumination.

(12) Text Telephones: The following shall be provided in accordance with 4.31.9:

(a) If an interior public pay telephone is provided in a transit facility (as defined by the Department of Transportation) at least one interior public text telephone shall be provided in the station.

(b) Where four or more public pay telephones serve a particular entrance to a rail station and at least one is in an interior location, at least one interior public text telephone shall be provided to serve that entrance. Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(13) Where it is necessary to cross tracks to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and between the rails, except for a maximum 2-1/2 inch gap on the inner edge of each rail to permit passage of wheel flanges. Such crossings shall comply with 4.29.5. Where gap reduction is not practicable, an above-grade or below-grade accessible route shall be provided.

(14) Where public address systems are provided to convey information to the public in terminals, stations, or other fixed facilities, a means of conveying the same or equivalent information to persons with hearing loss or who are deaf shall be provided.

Adoption of Joint Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 is revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12204).

Appendix to Part 1191 [Redesignated as Appendix A]

2. The appendix to part 1191 is redesignated as appendix A to part 1191

and the heading is revised to read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

Appendix A [Amended]

3. Appendix A to part 1191 is amended as set forth at the end of the common preamble.

Authorized by vote of the Access Board on November 18, 1992.

Kathleen K. Parker,
Chairman, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads,

Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

Appendix A [Amended]

2. Appendix A to part 37 is amended as set forth at the end of the common preamble.

Dated: June 30, 1993.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93–16735 Filed 7–14–93; 8:45 am]

BILLING CODE 8150–01–P; 4910–02–P

Friday
July 9, 1993

Federal Register

Part II

Department of Justice

Office of the Attorney General
28 CFR Part 36

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Department of Transportation

Office of the Secretary
49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings; Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

[Order No. 1746-96]

ARCHITECTURAL AND
TRANSPORTATION BARRIERS
COMPLIANCE BOARD

36 CFR Part 1191

[Docket 93-3]

RIN 3014-AA15

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act
Accessibility Guidelines; Detectable
Warnings

AGENCIES: Architectural and
Transportation Barriers Compliance
Board, Department of Justice, and
Department of Transportation.

ACTION: Joint notice of proposed
rulemaking.

SUMMARY: The Architectural and
Transportation Barriers Compliance
Board (Access Board) plans to conduct
additional research on detectable
warnings at curb ramps and hazardous
vehicular areas in response to potential
safety concerns raised by organizations
representing individuals with
disabilities and entities covered by the
Americans with Disabilities Act of 1990.

The Access Board, the Department of
Justice, and the Department of
Transportation propose to suspend
temporarily certain requirements for
detectable warnings in the Americans
with Disabilities Act Accessibility
Guidelines (ADAAG) until January 26,
1995 while the research is conducted.

DATES: Comments should be received by
September 7, 1993. Comments received
after this date will be considered to the
extent practicable.

ADDRESSES: Comments should be sent to
the Office of the General Counsel,
Architectural and Transportation
Barriers Compliance Board, 1331 F
Street NW., suite 1000, Washington, DC
20004-1111. The Access Board will
provide copies of all comments received
to the Department of Justice and the
Department of Transportation.

Comments will be available for
inspection at the above address from 9
a.m. to 5:30 p.m. on regular business
days.

This document is available in the
following alternate formats: cassette

tape, braille, large print, and computer
disc. Copies may be obtained from the
Access Board by calling (202) 272-5434
(voice) or (202) 272-5449 (TDD). The
document is also available on electronic
bulletin board from the Department of
Justice at (202) 514-6193.

FOR FURTHER INFORMATION CONTACT:
Access Board: James J. Raggio, General
Counsel, Architectural and
Transportation Barriers Compliance
Board, 1331 F Street NW., suite 1000,
Washington, DC 20004-1111.
Telephone (202) 272-5434 (voice) or
(202) 272-5449 (TDD).

Department of Justice: Stewart B.
Oneglia, Chief, Coordination and
Review Section, Civil Rights Division,
Department of Justice, Post Office Box
66118, Washington, DC 20035.
Telephone (202) 307-2222 (voice or
TDD).

Department of Transportation: Robert
C. Ashby, Deputy Assistant General
Counsel for Regulation and
Enforcement, Department of
Transportation, 400 7th Street SW.,
room 10424, Washington, DC 20590.
Telephone (202) 366-9306 (voice) or
(202) 755-7687 (TDD).

The telephone numbers listed above
are not toll-free numbers.

SUPPLEMENTARY INFORMATION:**Introduction**

The Americans with Disabilities Act
of 1990 (ADA) prohibits discrimination
on the basis of disability in
employment, State and local
government programs, public
transportation, public accommodations,
and telecommunications. Under section
504 of the ADA, the Access Board is
responsible for issuing guidelines to
assist the Department of Justice and the
Department of Transportation in
establishing accessibility standards for
certain titles of the Act.¹ The Access
Board has carried out its responsibility
and issued the Americans with
Disabilities Act Accessibility Guidelines
(ADAAG) in July 1991. See 36 CFR part
1191. ADAAG contains scoping
provisions and technical specifications

¹ The Access Board is an independent Federal
agency established by section 502 of the
Rehabilitation Act of 1973, as amended, whose
primary mission is to promote accessibility for
individuals with disabilities. The Access Board
consists of 25 members. Thirteen are appointed by
the President from among the public, a majority of
whom are required to be individuals with
disabilities. The other twelve are heads of the
following Federal agencies or their designees whose
positions are Executive Level IV or above: The
Departments of Health and Human Services,
Education, Transportation, Housing and Urban
Development, Labor, Interior, Defense, Justice,
Veterans Affairs, and Commerce; General Services
Administration; and United States Postal Service.

for making those elements and spaces
that typically comprise a building or
facility and its surrounding site readily
accessible to and usable by individuals
with disabilities. ADAAG is to be
applied during the design, construction,
and alteration of buildings and facilities
to the extent required by regulations
issued by the Department of Justice and
the Department of Transportation which
are responsible for implementing certain
titles of the ADA.

Under the Department of Justice's
regulations implementing title III of the
ADA, newly constructed and altered
places of public accommodation and
commercial facilities are required to
comply with ADAAG, which is adopted
as an appendix to the regulations. See
28 CFR 36.406. State and local
government programs covered by title II
of the ADA currently have the option of
applying ADAAG or the Uniform
Federal Accessibility Standards (UFAS)
when constructing or altering buildings
or facilities. See 28 CFR 35.151. The
Department of Justice is considering
adopting ADAAG as the single
accessibility standard for newly
constructed and altered State and local
government buildings and facilities and
will be issuing a separate notice of
proposed rulemaking on this issue in
the future.

Under the Department of
Transportation's ADA regulations,
public entities are required to comply
with ADAAG, which is adopted as an
appendix to the regulations, when
constructing or altering transportation
facilities. See 49 CFR 37.9, 37.41, and
37.43. Existing intercity rail stations and
key stations in rapid, light, and
commuter rail systems are also required
to comply with certain ADAAG
requirements. See 49 CFR 37.47, 37.51,
and 37.55.

Detectable Warnings

Congress directed the Access Board to
specifically address the area of
communication accessibility for
individuals with sensory impairments
when developing ADAAG. See H. Rept.
101-485, pt. 2, at 139; S. Rept. 101-116,
at 87. The Access Board included
requirements for text telephones,
volume control telephones, assistive
listening systems, and visual alarms in
ADAAG for individuals who are deaf or
have a hearing loss. The Access Board
also included requirements for building
signage and detectable warnings in
ADAAG for individuals who are blind
or have low vision.

A detectable warning is a
standardized feature built in or applied
to a walking surface to warn individuals
with vision impairments of hazards on

a circulation path. ADAAG 4.29.2
specifies that detectable warnings
consist of small truncated domes at
closely spaced intervals and contrast
visually with adjacent walking surfaces.
Detectable warnings used on interior
walking surfaces must also contrast in
resilience or in sound when contacted
by a cane.

ADAAG requires that detectable
warnings be provided at the following
locations:

- Curb ramps (ADAAG 4.7.7);
- Hazardous vehicular areas (i.e.,
where walks cross or adjoin vehicular
ways and there are no curbs, railings, or
other elements separating the pedestrian
and vehicular areas) (ADAAG 4.29.5);
- Reflecting pool edges that are not
protected by railings, walls, or curbs
(ADAAG 4.29.6); and
- Platform edges in train stations that
are not protected by platform screens or
guard rails (ADAAG 10.3.1(8)).

Detectable warnings are intended to give
advance notice to individuals with
vision impairments that they are
approaching a potentially dangerous
area and that they should proceed with
caution. A technical assistance bulletin
providing additional information on
detectable warnings is available from
the Access Board.

When the Access Board proposed to
include requirements for detectable
warnings in ADAAG, it received a large
number of comments both for and
against the proposal from individuals
who are blind and their organizations.
Those who supported the proposal
asserted that individuals who are blind
are exposed to greater risk of injury
where there is no curb, railing, or other
element separating pedestrian and
vehicular areas. They viewed detectable
warnings as an effective means of
alerting individuals who are blind of
hazards on a circulation path that might
otherwise go unnoticed and result in
serious injury. Those who opposed the
proposal questioned whether detectable
warnings are really needed. They
asserted that individuals who are blind
can readily detect dangers in the built
environment by proper use of the long
white cane or a guide dog. They viewed
detectable warnings as unnecessary,
interfering with normal cane use, and
posing hazards to others.

The Access Board was concerned
about the safety of individuals with
vision impairments and retained the
requirements for detectable warnings at
the locations described above when the
final rule was issued in July 1991. See
56 FR 35408, 35437-38 (July 26, 1991).
The Access Board relied on studies
which showed the small truncated

dome pattern to be an effective
detectable warning along the platform
edges of train stations. See "Tactile
Warnings to Promote Safety in the
Vicinity of Transit Platform Edges,"
Urban Mass Transportation
Administration (1987); "Pathfinder
Tactile Tile Demonstration Test
Project," Metro-Dade Transit Agency
(1988).

Since ADAAG was issued in July
1991, several developments have caused
the Access Board to further consider the
requirements for detectable warnings. In
May 1992, the Access Board published
in the *Federal Register* an ADA research
agenda listing areas where research and
study is needed to further develop and
refine ADAAG. See 57 FR 20360 (May
12, 1992). Public comments were
requested on the ADA research agenda,
including recommendations for
prioritizing areas and identifying
additional areas for research. Many of
those who commented on the ADA
research agenda urged the Access Board
to conduct additional research on
detectable warnings, including whether
they are actually needed by individuals
with vision impairments; whether they
pose potential safety hazards for others;
and their durability and maintainability,
especially under certain climatic
conditions (e.g., snow and ice, and the
need for snow and ice removal). A
national organization representing
individuals with disabilities expressed
specific concern about detectable
warnings at curb ramps interfering with
the ability of wheelchair users and other
individuals with mobility impairments
to safely negotiate the sloped surfaces.
Other disability organizations and
individuals with mobility impairments
have also shared this concern with the
Access Board through letters and
testimony given at public forums.

In July 1992, the Access Board
approved a proposed rule that added
several new sections to ADAAG for
certain State and local government
facilities. See 57 FR 60612 (December
21, 1992). Among the facilities covered
by the proposed rule are sidewalks and
other site improvements constructed or
installed in the public right-of-way by or
on behalf of a State or local government.
In certain limited situations, the
proposed rule would permit sidewalk
curb ramps to have a steeper slope than
normally allowed under ADAAG where
there is no level area at an intersection;
the adjoining roadway slope equals or
exceeds 1:12; and a level landing at the
top of the curb ramp, or a parallel curb
ramp, cannot be provided due to
existing physical or site constraints. See
proposed ADAAG 14.2.5 (4) Exception
2. Because of the concerns expressed

about detectable warnings interfering
with the ability of wheelchair users and
other individuals with mobility
impairments to safely negotiate sloped
surfaces and the steeper sidewalk curb
ramps permitted under the proposed
rule, the Access Board decided to
reserve the section on detectable
warnings for sidewalk curb ramps
pending further study of the issue.² See
proposed ADAAG 14.2.5 (7).

Also in July 1992, several transit
agencies submitted a petition for
rulemaking to the Department of
Transportation and the Access Board
requesting changes to various
requirements regarding key stations on
existing rail systems, including
detectable warnings.³ The Department
of Transportation reaffirmed the utility
of detectable warnings as a safety
feature for individuals with vision
impairments using transit stations, but
recognized that transit agencies may
have legitimate concerns regarding how
best to apply detectable warning
materials to existing station platforms in
a retrofit situation since the choice of
materials is more limited than in new
construction or alterations.
Consequently, the Department of
Transportation proposed to extend the
date for transit agencies to complete the
installation of detectable warnings along
the platform edges of key stations from
July 26, 1993 until January 26, 1995. See
57 FR 54210 (November 17, 1992).

In November 1992, the International
Mass Retail Association (IMRA), which
represents discount department stores,
warehouse stores, catalog showroom
stores, home building supply centers,
and other retail establishments,
submitted a petition for rulemaking to
the Access Board and the Department of

² The Access Board initially planned to request
information on post-construction evaluations of
sidewalk curb ramps with detectable warnings and
possible alternate locations for placement of
detectable warnings (e.g., level landings at the top
of curb ramps, landings at the bottom of parallel
curb ramps) in the preamble to the proposed rule
for State and local government facilities. Since the
Access Board subsequently decided to issue this
notice of proposed rulemaking regarding detectable
warnings, the information is sought in this
document under the section headed "Request for
Additional Information."

³ The transit agencies requested that the
requirements for detectable warnings along
platform edges of key stations and communications
requirements for individuals with hearing
impairments be postponed indefinitely. The transit
agencies also requested changes to the definition of
"extraordinarily expensive" work to make key
stations comply with ADA requirements and
"grandfathering" provisions for stations made
accessible before the ADA was enacted. The
Department of Transportation and the Access Board
did not grant these requests.

Justice regarding detectable warnings.⁴ IMRA members operate over 40,000 retail stores nationally. According to IMRA, about two-thirds of its members have raised sidewalks with curb ramps in front of their store entrances to separate pedestrian from vehicular areas. The other third, which includes large home building supply companies and warehouse clubs, have no curbs or railings in front of their store entrances. Rather, the entrances are at the same grade as the vehicular areas so that customers can take large shopping carts to their cars or utilize a loading zone along the entire length of the store front. Under ADAAG, detectable warnings would have to be placed on the curb ramps and along the curbless entrances to the stores. IMRA asserted that placing detectable warnings at these locations will create a potentially hazardous condition for individuals with mobility impairments, as well as persons without disabilities, including children, women who wear high heels, and elderly persons. IMRA contended that there are significant differences between retail stores and train stations (e.g., use of heavily-loaded shopping carts, customer speed and expectations, degree of parental supervision over children) that make it inappropriate to extrapolate the results of research conducted on detectable warnings along transit platform edges to the retail shopping setting. IMRA also noted that the American National Standard Institute's (ANSI) A117 Committee deleted provisions for detectable warnings from the final draft of its revised A 117.1 standard.

IMRA requested that the Access Board conduct additional research that specifically focuses on the safety, durability, and maintainability of detectable warnings at curb ramps, retail shopping centers, and other exterior sites with high pedestrian traffic such as at hotel entrances and on college campuses. IMRA further requested that the Access Board and the Department of Justice suspend the ADAAG requirements for detectable warnings at curb ramps and hazardous vehicular ways until these concerns are addressed by the research.

⁴ IMRA originally submitted a petition for rulemaking to the Access Board in July 1992 which raised concerns about detectable warnings being installed along accessible routes in parking lots. The Access Board subsequently published a technical assistance bulletin responding to frequently asked questions about detectable warnings which clarified that detectable warnings should not be installed as wayfinding aids through a parking lot. IMRA submitted an amended petition in November 1992 which clarified its other concerns about detectable warnings.

Proposed Common Rule

As discussed above, the Access Board relied on studies involving the installation of detectable warnings along transit platform edges when it issued ADAAG. The studies showed that the small truncated dome pattern was an effective detectable warning at these locations and did not indicate any significant safety concerns for other user groups. The small truncated dome pattern has been used as a detectable warning along the full length of transit platform edges in the Bay Area Rapid Transit (BART) system for five years and is safely negotiated by individuals with mobility impairments, as well as persons without disabilities.

In light of the potential safety concerns that have been raised by both organizations of individuals with disabilities and entities covered by the ADA regarding application of detectable warnings to curb ramps and hazardous vehicular areas in retail shopping and other settings, the Access Board plans to conduct additional research on detectable warnings at these locations. See notice announcing the Access Board's research priorities for fiscal years 1993 and 1994 published elsewhere in today's *Federal Register*. In addition to examining potential safety concerns, the Access Board will evaluate the need or lack of need for detectable warnings by individuals with vision impairments, and durability and maintainability issues. The Access Board expects that the research will provide the additional technical information needed to determine whether any changes in the ADAAG requirements for detectable warnings are justified. In the meantime, the Access Board believes that, because of the potential safety concerns that have been raised about the use of detectable warnings in settings other than along transit platform edges, it would be in the public interest to suspend temporarily until January 26, 1995 the requirements for detectable warnings at curb ramps (ADAAG 4.7.7); hazardous vehicular areas (ADAAG 4.29.5); and reflecting pools (ADAAG 4.29.6) while the research is conducted. The requirements for detectable warnings along platform edges of train stations (ADAAG 10.3.1 (8)) are not affected by this proposed rule.⁵

⁵ As discussed earlier in this document, the Department of Transportation issued a notice of proposed rulemaking in November 1992 to extend the date for transit agencies to complete the installation of detectable warnings along platform edges of key stations until January 26, 1995. See 57 FR 54210 (November 17, 1992). Neither the Department of Transportation's November 1992 proposed rule nor this proposed rule relieves transit

As discussed in the introduction to this document, the Department of Justice and the Department of Transportation have adopted ADAAG as an appendix to their regulations implementing certain titles of the ADA. The Department of Justice and the Department of Transportation join in this rulemaking and propose to adopt in their respective regulations a common rule to suspend temporarily the requirements for detectable warnings at the locations discussed above. For purposes of the Department of Transportation regulations, the temporary suspension would apply to curb ramps and curbless sidewalks serving entrances to transit facilities and ancillary areas on the site such as parking lots, "kiss and rides", and bus stops. Comments on this proposed rule should be sent to the Access Board at the address listed at the beginning of this document. The Access Board will provide copies of all comments received to the Department of Justice and the Department of Transportation.

Request for Additional Information

In addition to comments on this proposed rule, the Access Board is interested in receiving information about research activities and studies relating to detectable warnings, including:

- Need or lack of need for detectable warnings;
- Data on accidents or injuries relating to the absence or presence of detectable warnings;
- Post construction evaluations of detectable warnings installed at curb ramps and hazardous vehicular areas at various sites (e.g., retail stores, hotels, and college campuses);
- Durability and maintainability under various climatic conditions (e.g., snow and ice, and the need for snow and ice removal);
- Alternate designs for detectable warnings and alternate materials for detectable warnings; and
- Alternate locations for placement of detectable warnings at curb ramps (e.g., level landings at the top of curb ramps, landings at the bottom of parallel curb ramps).

Regulatory Analyses and Notices

The Access Board, the Department of Justice, and the Department of Transportation have independently determined that this proposed rule is not a major rule under Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is a

agencies from providing detectable warnings on newly constructed or altered transit platforms.

significant rule under the Department of Transportation's Regulatory Policies and Procedures since it amends the agency's ADA regulations, which are a significant rule. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board, the Department of Justice, and the Department of Transportation hereby independently certify that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The Access Board, the Department of Justice, and the Department of Transportation have also independently determined that there are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment under Executive Order 12612.

Text of Proposed Common Rule

The text of the proposed common rule appears below.

§ _____. Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until January 26, 1995.

Adoption of Proposed Common Rule

The agency specific proposals to adopt the common rule, which appears at the end of the common preamble, are set forth below.

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, Individuals with disabilities, Reporting and recordkeeping requirements.

Authority and Issuance

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301; and 42 U.S.C. 12186(b), and for the reasons set forth in the common preamble, part 36 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b).

2. Section 36.407 is added to read as set forth at the end of the common preamble.

Dated: June 7, 1993.

Janet Reno,
Attorney General.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 is revised to read as follows:

Authority: Americans With Disabilities Act of 1990 (42 U.S.C. 12204).

2. The appendix to part 1191 is redesignated as appendix A to part 1191

and the heading is revised to read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

3. Section 1191.2 is added to read as set forth at the end of the common preamble.

Authorized by vote of the Access Board on November 18, 1992.

Kathleen K. Parker,
Chairman, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: Americans With Disabilities Act of 1990 (42 U.S.C. 12101-12213); 49 U.S.C. 322.

2. Section 37.15 is added to read as set forth at the end of the common preamble.

Dated: March 31, 1993.

Federico Peña,
Secretary of Transportation.
[FR Doc. 93-15942 Filed 7-8-93; 8:45 am]
BILLING CODE 4410-01-P, 8150-01-P, 4910-02-P

Friday
July 9, 1993

Part III

Architectural and Transportation Barriers Compliance Board

**Americans With Disabilities Act Research
Priorities for Fiscal Years 1993 and 1994;
Notice**

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans With Disabilities Act Research Priorities for Fiscal Years 1993 and 1994

AGENCY: Architectural and Transportation Barriers Compliance Board.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) announces its Americans with Disabilities Act research priorities for fiscal years 1993 and 1994. The Access Board will sponsor research on detectable warnings; technical requirements for ramps; clear floor space, maneuvering clearances and reach ranges for individuals using power wheelchairs and three-wheeled scooters; and public information for individuals with cognitive disabilities. The research is intended to evaluate the effectiveness of existing accessibility guidelines and to provide a basis for new guidelines. Regulatory impact analyses will also be prepared for planned rulemaking in the areas of recreational facilities, outdoor developed areas, and children's environments.

FOR FURTHER INFORMATION CONTACT: Laurinda Steele, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004-1111. Telephone (202) 272-5434 (voice) or (202) 272-5449 (TDD). These are not toll-free numbers. This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION:

Background

The Access Board is an independent Federal agency whose primary mission is to promote accessibility for individuals with disabilities. The Access Board is responsible for issuing guidelines to assist other Federal agencies in establishing accessibility standards for buildings and facilities under the Architectural Barriers Act of 1968 and the Americans with Disabilities Act of 1990. In 1991, the Access Board issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG). See 36 CFR part 1191. The Department of Justice and the Department of Transportation adopted ADAAG as the accessibility standards for newly constructed or altered buildings and facilities in regulations implementing certain titles of the ADA.

See 28 CFR part 36; 49 CFR part 37. The Access Board has recently proposed to revise ADAAG by adding new sections for certain State and local government facilities. See 57 FR 60612 (December 21, 1992). The Access Board is also considering adopting the revised ADAAG as the applicable standard for newly constructed, altered, or leased Federal facilities under the Architectural Barriers Act. Standards issued by other Federal agencies under the Architectural Barriers Act or the Americans with Disabilities Act are required to be consistent with the Access Board's guidelines. As a result, it is anticipated that ADAAG will eventually be the single accessibility standard for places of public accommodation and commercial facilities, State and local government facilities, and Federal facilities.

During the initial rulemaking to establish ADAAG, the Access Board asked questions on a number of issues. See 56 FR 2296 (January 22, 1991). The comments received contributed considerably to the development of the guidelines. However, the comments also revealed several areas where existing information was insufficient to allow the Access Board to set specific requirements. Furthermore, some of the technical provisions in ADAAG are based on research that is several decades old and may not reflect the needs of the current population of individuals with disabilities. Consequently, the Access Board compiled a list of thirty-one areas that may be in need of further study before new or additional accessibility guidelines can be developed.

On May 12, 1992, the Access Board published a notice in the *Federal Register* requesting comments on the thirty-one areas identified during the initial ADAAG rulemaking. See 57 FR 2036 (May 12, 1992). The notice requested information on research activities which are being planned or sponsored by other public and private organizations in the areas identified, as well as recommendations for prioritizing the areas for the Access Board's technical assistance and research plan for fiscal years 1993 through 1997. Fifty-four comments were received in response to the research notice. Commenters identified seventeen studies and reports relating to the research areas. Commenters also suggested several areas in need of research that were not identified in the research notice.

Upon considering the responses to the notice, the Access Board has established the following objectives for its technical assistance and research program:

(1) To evaluate the effectiveness of existing accessibility guidelines. Many of the technical provisions of ADAAG are based on research conducted in the 1970's that supported the development of the ANSI A117.1-1980 and 1986 standards on which the guidelines are based. The Access Board will sponsor research to ensure that ADAAG remains consistent with technological advances, other research findings, and changes in model codes and standards, and that the guidelines continue to meet the needs of individuals with disabilities.

(2) To provide a basis to develop new accessibility guidelines. In light of evolving technology and to allow flexibility in design, the Access Board has established performance standards in several areas. For example, ADAAG 4.34.4 requires automated teller machines to be accessible to and usable by persons with vision impairments and ADAAG 10.3.1(14) requires effective communication for persons with hearing impairments in transit facilities where there is a public address system. In other areas, the Access Board did not have sufficient information to establish any guidelines and reserved provisions (e.g., ADAAG 4.12, Windows; ADAAG 5.9, Quiet Areas; 36 CFR 1192.177, Ferries, excursion boats and other vessels). The Access Board will sponsor research to determine whether performance standards have resulted in effective design solutions that are readily accessible to and usable by individuals with disabilities and to develop guidelines for reserved provisions and other areas identified in response to public need.

Consistent with these objectives, the Access Board selected the following research areas as priorities for fiscal years 1993 and 1994, subject to availability of funds:

- (1) Detectable warnings;
- (2) Technical requirements for ramps;
- (3) Clear floor space, maneuvering clearances and reach range requirements for individuals using power wheelchairs and three-wheeled scooters; and
- (4) Public information for individuals with cognitive disabilities.

These areas are further discussed below.

Detectable Warnings

The majority of commenters on the research notice urged the Access Board to sponsor additional research on detectable warnings, including whether they are actually needed by individuals with vision impairments; whether they pose potential safety hazards for others; and their durability and maintainability, especially under certain climatic conditions (e.g., snow and ice and the

need for snow and ice removal). A national organization representing individuals with disabilities expressed specific concern about detectable warnings at curb ramps interfering with the ability of wheelchair users and other individuals with mobility impairments to safely negotiate the sloped surfaces. In light of these comments and a petition for rulemaking filed by the International Mass Retail Association in November 1992 regarding detectable warnings, the Access Board will sponsor research on detectable warnings. This project will include an international literature review and post-construction evaluations of detectable warnings at curb ramps and on walkways that adjoin a vehicular area where there are no curbs. For additional information, see notice of proposed rulemaking published elsewhere in today's *Federal Register* to suspend temporarily certain requirements for detectable warnings until January 26, 1995, while research is conducted.

Technical Requirements for Ramps

During the initial ADAAG rulemaking, the Access Board asked questions regarding the adequacy of the 1:12 maximum slope requirement for ramps. This maximum ramp slope was originally established in 1961 by the ANSI A117.1-1961 standard. A large number of comments were received on this issue. While a majority of the responses favored a maximum ramp slope of 1:12, about a third of the commenters recommended that the maximum ramp slope be reduced. Some commenters suggested a ramp slope of 1:16 to 1:20. Although the 1:12 maximum ramp slope was retained in ADAAG, the Access Board recommended that further research be conducted and included a note in the appendix to ADAAG that ramp slopes between 1:16 to 1:20 are preferred. See ADAAG A4.8.2.

In response to the Access Board's research notice, the New Jersey Institute of Technology noted that considerable study has already been done on the "inadequacy of the present [ramp slope] standard for manual wheelchair users" and recommended that research address the difficulty that individuals with mobility impairments who are ambulatory may have in negotiating sloped surfaces. Another commenter, the Institute for Technology Development, noted that manual wheelchair users participating in a residential access study found 14 foot ramps with a 1:12 slope difficult to use and that the majority of individuals with mobility impairments who are ambulatory had difficulty negotiating

ramps and preferred to use steps. For example, individuals with above knee amputations may not have the ability to flex a prosthetic knee joint while walking. In addition, new types of wheelchairs have been introduced during the last decade such as sport models which have a different center of gravity which might cause them to tip more easily on a 1:12 ramp slope (the maximum allowed in ADAAG). The Access Board will sponsor a research project to study ramp slope in relation to distance, including the adequacy of the 1:12 maximum slope and 30 foot maximum length for today's population of individuals with mobility impairments. The research project will evaluate existing research and conduct human subject testing focused on individuals with disabilities who use mobility devices that have not been the subject of previous study.

Clear Floor Space, Maneuvering Clearances, and Reach Range Requirements for Individuals Using Power Wheelchairs and Three-Wheeled Scooters

Major advances in medical technology in the last decade have resulted in a significant increase in the number of persons using power mobility devices. Not only are people today living longer, but people are also surviving accidents and diseases resulting in severe disabilities. In addition, many more individuals with disabilities are taking advantage of power mobility aids to increase their range of activities partly in response to increased accessibility to public accommodations, transportation, and employment opportunities. As a result, three-wheeled scooters and power wheelchairs are one of the fastest growing segments of the mobility aid market. Existing ADAAG requirements for maneuvering clearances allow some of the clear floor space to extend under certain elements (e.g., lavatories and drinking fountains) provided that they have sufficient vertical clearance for knees and toes. However, the requirement for clearance under these elements assumes that the person is using a manual wheelchair. See ADAAG Fig. A3. The tiller of a three-wheeled scooter is in front of the user's knees and therefore cannot be accommodated under these elements. Moreover, the control box of most power wheelchairs will not fit under these elements.

Maneuvering power wheelchairs and three wheeled scooters in confined spaces is not just the function of the mobility device but also the ability of the user to manipulate the controls. Several commenters supported research on this issue. For example, Eastern

Paralyzed Veterans Association stated "the longer (and often wider) wheelbases of power chairs and scooters, coupled with electric controls which make subtle position and direction adjustments more difficult than for those using manual chairs can adversely impact the usability of spaces which meet only the minimum accessible dimensions."

In regard to reach ranges, the tiller of three-wheeled scooters prevents individuals using these mobility devices from approaching elements (e.g., telephones, light switches) in the forward direction as closely as could be achieved from a manual wheelchair. Furthermore, individuals using power wheelchairs are more likely to have a restricted reach range due to limited upper body mobility. Thus, in addition to clear floor space and maneuvering requirements, the achievable reach ranges for individuals using power wheelchairs and three-wheeled scooters is different than individuals using manual wheelchairs upon which most previous studies have been conducted. The Building Owners and Managers Association International supported research in this area and recommended that "if guidelines are developed for persons using powered wheelchairs and three-wheeled scooters, strong consideration should be given to where and when the guidelines would apply."

The Access Board has also recently examined the reach range requirements for accessible automated teller and fare vending machines. See proposed rule amending the reach range requirement for automated teller and fare vending machines 57 FR 41006 (September 8, 1992). As discussed in that document, the 54 inch maximum height is taken from ANSI A117.1-1980. The original research for that reach height was conducted in the 1950's and consisted of measuring how high wheelchair users could extend their arms in a vertical direction on a wall. The studies appear not to have tested in depth whether wheelchair users or other individuals with disabilities could manipulate controls at that height, such as inserting a card in an automated teller or fare vending machine. Furthermore, the existing research does not appear to address the depth to which an individual can reach and manipulate controls at different heights. The Access Board has proposed to amend ADAAG to include a table of reach depths and maximum heights for automated teller and fare vending machines controls based on a straight line interpolation connecting the points between the maximum side reach with and without an obstruction as a reasonable way to

address the issue of increased reach depth resulting from recessed controls and the installation of surrounds in front of the machines. The Access Board recognizes that any reach range requirement must also take into account the needs of other user groups such as individuals who have difficulty stooping or bending and individuals who are short statured and that further research is needed to establish definitive specifications.

The Access Board will sponsor a research project on clear floor space, maneuvering clearances and reach range requirements for individuals using power wheelchairs and three-wheeled scooters. The project will also study whether additional specifications for interior circular in transportation vehicles are needed, including space limitations at fare boxes in buses and light rail vehicles and whether fare boxes in such vehicles could be made smaller or placed differently. In addition, the project will include a literature review on reach ranges focusing on the population that was tested by earlier research on reach ranges and the extent to which the earlier research tested the manipulation of controls at different heights and reach depths. The Access Board will consider sponsoring additional research on reach ranges after the literature review.

Public Information for Individuals With Cognitive Disabilities

Numerous commenters on the research notice expressed concern regarding the lack of accessibility provisions for individuals with cognitive disabilities. The Arc (formerly the Association for Retarded Citizens of the United States) pointed out that of the 43 million Americans with disabilities, it is estimated that 25 percent or about 11 million individuals have a cognitive disability such as mental retardation, traumatic brain injury, learning disabilities or Alzheimer's disease. At its 1991

national consensus development conference on title III of the ADA, the Arc concluded that signage and customer service are two major areas that must be considered when developing strategies to provide equal access for individuals with cognitive disabilities. The Arc felt the development and widespread use of a system of pictograms, for example, would reduce structural communication barriers and greatly enhance access. The Society of Environmental Graphic Designers supported addressing the needs of individuals with cognitive disabilities and stated that their members would support the development of a symbol system that would assist in integrating individuals with cognitive disabilities into everyday activities such as shopping, banking or using public transportation. The Center for Accessible Housing also urged "inclusion of research on communication problems resulting from cognitive impairments." Verbal Landmark, Inc. urged the Board to establish guidelines that "demonstrate equal consideration to the vision, cognitive, and mentally impaired individuals as well as the physically disabled." Metro-Dade Transit Agency felt that "uniform signage in transportation facilities that meet the needs of individuals with visual impairments and developmental disabilities would be extremely beneficial and consistent with the concept of universal design".

The Access Board will sponsor a research project on symbols, signage, and information that would effectively convey public information and wayfinding information to individuals with cognitive disabilities in buildings, transportation facilities and outdoor facilities.

Other Issues

The Access Board's research program for fiscal year 1993 and 1994 will also include the preparation of regulatory

impact analyses for planned rulemaking in the areas of recreational facilities, outdoor developed areas, and children's environments.

The research notice also requested comment on proposed focus issues for fiscal years 1993 through 1997. The Access Board adopted the focus year policy prior to the Americans With Disabilities Act to assist in selecting technical assistance and research projects aimed at improving architectural, transportation, and communication accessibility. Few commenters expressed interest in the focus issues. In light of its increased responsibilities under the Americans With Disabilities Act, the Access Board has decided to drop the focus year policy and will devote all of its research funds to the development of accessibility guidelines for the Americans With Disabilities Act.

This notice of priorities does not solicit contract applications for these research areas. Requests for proposals for fiscal year 1993 projects were published in the Commerce Business Daily this spring and the research projects are expected to commence this fall.

Additionally, the Access Board is interested in receiving information on technical and research activities which are being planned or sponsored by other public and private organizations, including published and unpublished studies on issues related to architectural, transportation, and communication accessibility. Copies of reports or other information should be sent to Laurinda Steele at the address indicated at the beginning of this notice.

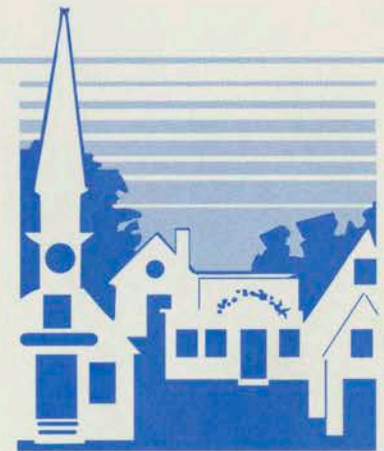
Kathleen K. Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 93-15941 Filed 7-8-93; 8:45 am]

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The Americans With Disabilities Act



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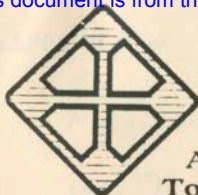
compliance

workbook

for small

communities

National Association of
Towns and Townships



National
Association of
Towns and Townships

Alex;

Jan 23

Thanks for your call. Here
is the ADA guidebook for
small towns and a
letter I wrote for Natat
two years ago, responding
to some of the questions
you posed which we felt

were inadequately addressed
in DOJ's supplemental
ADA regulations. Our
project officer at DOJ
is faxing me a copy of
the curb cut memo and
I hope it will have
arrived before this note
is delivered. In rereading
my letter to DOJ, I
feel certain that we strongly
the Senators' reasonable
time line for local government
compliance. — Hamilton Brown



National
Association of
Towns and Townships

March 29, 1993

Elizabeth A. Stewart
Office of the General Counsel
United States Architectural and Transportation
Barriers Compliance Board
1331 F Street, NW
Washington, DC 20004-1111

Dear Ms. Stewart:

The National Association of Towns and Townships (NATaT) is writing to respond to the proposed rulemaking by the Architectural and Transportation Barriers Compliance Board regarding the Americans with Disabilities Act Accessibility Guidelines; State and Local Government Facilities.

NATaT Strongly Supports the ADA

Over the past two years, NATaT has provided unique leadership in promoting acceptance, understanding and active compliance with the ADA by small and rural governments. NATaT has sold over 9,000 copies of *The Americans With Disabilities Act: a compliance workbook for small communities* to individual local governments as well as bulk orders to such groups as the Equal Employment Opportunity Commission (EEOC), the National Organization on Disabilities, numerous state township associations, the South Carolina Municipal Association and others.

The basic premise of the workbook (written with the close cooperation of the Department of Justice [DOJ] and the EEOC) is that the ADA allows considerable flexibility for small governments with limited resources to open up their services, facilities and employment opportunities to citizens with disabilities. Without compromising the admirable purpose of the ADA, the "undue hardship" and "undue burden" provisions within the ADA regulations are designed to protect small governments from unlimited compliance costs by insuring that they can and should consider low-cost and no-cost compliance alternatives. In the area of employment, the EEOC's *Technical Assistance Manual for the Americans With Disabilities Act* states in Chapter III, section 8.4, "... the employer is free to choose among effective accommodations, and may choose one that is less expensive or easier to provide." In the title III regulations dealing with major structural

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renovations, DOJ even provides a specific standard (i.e. in excess of 20 percent) to determine when the cost of providing an accessible path of travel will be deemed disproportionate to the overall cost of alterations to the primary function area.

This essential fairness, which lies at the heart of the ADA legislation, is threatened if non-negotiable regulations are allowed to replace local flexibility and choice. The proposed ADAAG rules for state and local governments violate, in NATaT's opinion, the spirit of the ADA in three major areas: they examine peripheral rather than critical cost areas; they mandate such costly structural items as elevators for all new public buildings or for major renovations above the ground floor without providing any guidelines as to if or when an "undue hardship" could be justified on the basis of the percentage of total project cost or the limited resources available; and they turn the responsibility for documenting economic impact and the need for low-cost alternatives back to the regulated community rather than providing such information as required in various impact analyses.

Regulatory Flexibility Act Largely Ignored

NATaT would like to offer some background on the proposed ADAAG rules for state and local governments, because the arbitrary nature of the issues chosen for the preliminary impact analysis has its roots in the same flawed process conducted for the final 1991 ADAAG regulations, implementing Subtitle A of title II of the ADA.

In 1980, ten years before passing the ADA, Congress recognized the necessity of balancing the demands of unfunded mandates with the limits of small town and small business resources when it enacted the Regulatory Flexibility Act (RFA). But NATaT believes that local governments have been denied much of the discretion that the Regulatory Flexibility Act should provide for ADA compliance because the required RFA analysis, describing, "... significant alternatives to the rule.... designed to minimize any significant impact of the rule on small entities...." simply has not been conducted.

While the Regulatory Flexibility Act is acknowledged in both the initial ADAAG regulations of 1991 and again in the proposed rules for State and Local Government Facilities published December 21, 1992, the full scope of the RFA requirements are largely ignored. The proposed ADAAG rules state correctly that the RFA allows its required regulatory flexibility analysis to be conducted "in conjunction with or as part of any other agenda or analysis required by any other law...".

The RFA, however, does not allow for other such mechanisms either to replace, or to ignore altogether, the specific economic impact analysis of affordable alternatives for small entities. Yet both the final 1991 requirements and the proposed ADAAG rules substitute a regulatory impact analysis, allowed under Executive Order 12291, for the full

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impact analysis on small entities required by the RFA. Both sets of ADAAG regulations maintain that the "reg flex" requirements have been met. In fact, they have not. Let me cite a few illustrations.

On page 4, the December 18, 1991 Justice Department Final Regulatory Impact Analysis for the title II regulations states: "... it seems relatively clear that its [Subtitle A of title II] overall economic impacts are likely to be quite minor.... Virtually all of the public sector-- as measured by size-related criteria such as size of capital stock or number of employees--is already subject to the Rehabilitation Act on account of receipt of Federal funding."

Throughout the remainder of the analysis, there are statements that contradict this far-reaching assertion. The first sentence on page 27, says, "The remaining major cost items imposed by Subtitle A of title II [referring to costs for court-related interpreters discussed on page 26] will be the cost of providing program accessibility to the "town hall" operations of those governmental bodies that do not now handle Federal funding and the costs incurred by newly-covered special purpose governmental bodies."

On the same page, the analysis concludes that the number of public entities not receiving federal funding is "20,000 or so," a remarkable reversal from the "... virtually all of the public sector...." so confidently cited on page 4. And from NATaT's perspective, these "town hall" operations are the very same small public entities which the full regulatory impact analysis is meant to benefit and protect.

No Guidance on "Undue Burden"

In this same section, there is a reference to "undue burden" which has vast implications for small and rural governments, but no guidance as to its application. The sentence reads, "Out of the 83,250 existing governmental bodies, perhaps three-quarters either receive Federal funding for or through their central administrative branch, or will be exempt themselves from significant compliance costs on 'undue burden' grounds." Offered as it is without explanation, the sentence raises a number of questions:

- does the sentence suggest, erroneously, that a local government either receives federal funding or "will be exempt?"
- does the phrase, "will be exempt themselves" imply that the determination of "undue burden" is made by an outside authority or agency, and that once made, this judgement protects the entity from "significant compliance measures" regardless of their nature?

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- what are the factors for determining "undue burden?" Is this determination based on the collective costs of all program accessibility expenditures, or is each facility and/or program judged individually, regardless of the total impact on the community's available resources?

This is a dangerously open-ended statement. Local governments are looking for guidance on acceptable and affordable ADA strategies, not loop-holes for non-compliance. In ignoring the RFA, by not providing alternatives and by not providing some guidance as to the allocation of scarce resources to where they will do the most good, the DOJ is actually hindering ADA implementation and dampening the enthusiasm with which most small town officials have greeted the opportunity to open up programs, services and employment to citizens with disabilities.

This failure to address essential small town issues continues in the December 16, 1992 PRIA for proposed state and local government facilities. The PRIA states on page 5 that "the new provisions addressed here pertain to buildings and facility types unique to public entities that are owned and operated by State and local governments covered by title II of the ADA.

The four proposed sections deal with:

- Section 11. Judicial, Legislative and Regulatory Facilities
- Section 12. Detention and Correctional Facilities
- Section 13. Accessible Residential Housing
- Section 14. Public Rights-of-Way

With the exception of rural counties, the vast majority of small and rural governments do not own or operate courtroom, regulatory or correctional facilities. Generally, they are not involved with the administration of public housing. If there is a downtown or main street area or a closely-settled residential area, then small towns do construct and maintain sidewalks, traffic signals and indicators. This single section, to its credit, is clear, appropriate and reasonable.

In its discussion of the applicability of the Regulatory Flexibility Act, the proposed rule states that a preliminary analysis must be conducted for small communities since, "These guidelines will have such [a substantial economic] impact." While offering nearly 200 pages of detailed analyses of "facility types" which are largely irrelevant to small and rural governments, the PRIA offers no cost impact data, alternatives or guidelines for such key areas as alterations, exempt spaces and structures, accessible entrances and automatic door openers which are treated together under General Issues. Each of these issues must be considered in calculating costs for virtually all new construction or renovation to virtually all local government buildings. NATaT believes that this information simply must be gathered and

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weighed heavily by the Access Board before the final regulations are issued. And this analysis should be developed not only to guide the Board's decisions, but to assist small and rural governments in understanding the alternative ADA compliance strategies available to them and the broad definitions "undue burden", "undue hardship" and "reasonable accommodation."

In NATaT's opinion, these definitions are critical to protect small towns from economic exploitation and from regulation by law suit. A whole new breed of ADA "entrepreneurs" has grown up, armed with scare tactics, high-priced copies of free government materials and construction plans based on total access to every public facility. Unwary local governments will continue to waste scarce public dollars on what they are told "the ADA requires," unless some broad, federally-endorsed guidelines are available to help small town leaders to judge the difference between reasonable accommodations and profiteering.

Similarly, many small town leaders say that their first indication that the community may be out of compliance with the ADA comes in the form of either a law suit or a compliant filed with a federal agency. Once more, definitions of the fundamental concepts on which compliance is judged would prevent a great deal of unnecessary legal expenses to simply hammer out in court what should be defined by the agencies charged with regulation. Further, such definitions would provide the broad parameters for negotiation and alternative dispute resolution, replacing the reliance on litigation now sought to fill this information void.

The philosophy of "regulatory flexibility" exists within ADA itself through the availability of exemptions based on undue burden or undue hardship. But without definitions based on such accessible information as annual general revenues and percentage of total project costs, local government will continue to spend dollars unnecessarily on facility improvements and legal fees.

Faulty, Undocumented Standards

In reading and re-reading the final and proposed ADAAG rules and their accompanying analyses, one wonders how the needs of small towns could be so systematically ignored or understated. Is there an assumption that simply will not hold up to even the least demanding logic? It is there, we believe, buried in the discussion of Regulatory Process Matters on page 60,650 of the December 21, 1992 *Federal Register*. It reads, "Several studies discussed in the Regulatory Impact Analysis prepared for the initial rulemaking have shown that designing buildings and facilities to be accessible, from the conceptual phase onward, adds less than one percent to the total construction costs." Who can argue with a statistic like that when the benefits of such

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accessibility are widely recognized and supported by the governments affected?

But where did these studies come from and what do they conclude about smaller governments? Let's go to the source cited in the proposed rules. The Final Regulatory Impact Analysis for Subtitle A of title II of the ADA states, on page 20, that "a number of studies have offered estimates regarding the likely cost increase of making new construction accessible. Those studies have reached varying conclusions regarding the likely cost increase that range from 0.1 % to 1.0 % of total construction costs, exclusive of land." That's it. No citations. No details. No breakout for small communities.

How does this one percent solution play out, using only the figures contained in the analysis itself? Earlier, on page 18, dollar estimates for the year 1990 are offered for installation of a ramp covering a seven step rise (\$17,000) and installing an accessible water fountain (\$1,700). By adding these two figures together and multiplying by 100, we find that this building would have cost close to \$2,000,000 in order to conform to the estimated one percent increase. If we then calculate the cost for an elevator (required under sections 4.1.3.(5) and 4.1.6.(1)(k) of the proposed rules) and the cost for an automatic outside entrance door opener (proposed under the discussion of "General Issues"), the building easily tops \$10,000,000 in order to maintain the one percent upper limit documented by "a number of studies." The lower limit of a one tenth of one percent increase in construction costs yields figures that no small town in the country ever has or will spend on a public facility.

The Real World of Small Town America

Moving from numbers in studies to numbers that bear on ADA compliance in the real world:

- half of all local governments in the country (about 19,000) are less than 1,000 in population
- according to the Bureau of the Census, the 1986 average annual revenues for localities under 1,000 was around \$200,000
- with these limited resources, localities must provide all local services, maintain public health and safety and meet dozens of other unfunded federal and state mandates which often carry heavy penalties for non-compliance

There is a real world out there in which local governments respond with good will to reasonable regulations and meaningful guidance. There are persons on township boards with disabilities who are planning to finance accessible rest rooms before the January 1995 deadline for structural changes. They would be outraged if forced to spend scarce resources on accessible life guard stands, fire towers and

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the like. Can't there be some clear, reasonable benchmarks which serve the interests of local government, members of the disability community and the agencies charged with compliance? And shouldn't the Department of Justice and the Compliance Board be taking the lead in proposing and promoting rules based on negotiation, compromise and alternative resolution processes, rather than issuing regulations that elicit from NATaT, one of ADA's principal champions, a response that appears to place us in an adversarial position?

In conclusion, NATaT strongly urges the Access Board take the following steps before issuing the final ADAAG rules for state and local government facilities:

- conduct the full economic impact analysis on small entities as required by the RFA, even if it is included in a final Regulatory Impact Analysis
- examine the categories listed earlier (elevators, entrances, etc.) that have broad-ranging application to all local government facilities
- articulate clearly the relationship between the alternatives identified and encouraged by the reg flex analysis and the thresholds which trigger consideration for undue burden and undue hardship exemptions
- describe these definitions, relationships and threshold criteria in the clearest of terms, yet incorporate maximum latitude for local flexibility and negotiation in reaching compliance agreements

NATaT staff would be happy to confer with the Access Board on any of the issues raised in this response. Thank you for your consideration of these comments that reflect the concerns of thousands of local governments and millions of Americans.

Sincerely,

Jeffrey H. Schiff
Executive Director

cc: Regina Montoya, Office of Intergovernmental Affairs, The White House; Barney Singer, U.S. Small Business Administration

The Americans With Disabilities Act



a

compliance

workbook

for small

communities

National Center for
Small Communities

a program of the
National Association of
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This book is printed on recycled paper.

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--From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

The Americans With Disabilities Act a compliance workbook for small communities

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Library of Congress Cataloging-in-Publication Data

The Americans with Disabilities Act : a compliance workbook for small communities / National Center for Small Communities.

p. cm.

Includes bibliographical references.

ISBN 0-925532-08-8

1. Handicapped--Legal status, laws, etc.--United States.
 2. Handicapped--Employment--Law and legislation--United States.
 3. Discrimination against the handicapped--Law and legislation--United States.
 4. Local government--United States. I. National Center for Small Communities (National Association of Towns and Townships)
- KF480.A956 1992
346.7301'3--dc20
[347.30613]

92-17025
CIP

acknowledgements

The Americans With Disabilities Act: a compliance workbook for small communities is a publication of the National Center for Small Communities, the training and technical assistance arm of the National Association of Towns and Townships. It was co-authored by Nancy T. Stark and Hamilton Brown of the NATaT staff and Sharon Rennert, Associate Staff Director, Commission on Mental and Physical Disability Law, American Bar Association. Additional material was provided by Jeffrey H. Schiff, NATaT's executive director. Ronnie J. Kweiler edited the book with the assistance of Bruce G. Rosenthal and Schiff. It was produced by Kweiler, Lawrence Saltzman, Shannon St. Louis and Kimberly Y. Proctor.

NATaT wishes to express its appreciation to members of the "Thinkers' Session" who offered many comments and suggestions on the draft outline. The attendees included John D. Kemp, Executive Director, United Cerebral Palsy Association, Washington, D.C.; John Dooley, Attorney, Minnesota Association of Townships; Michael Hopkins, Director, Community and Governmental Consultants, Stillwater, Okla.; Judith A. Davis, Employment Coordinator, Project LINK Program, Mainstream, Inc., Bethesda, Md.; Sara Kaltenborn, Office on Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice.

This guidebook is one in a series of guides and training modules that are designed to improve the delivery of services to rural people through management training for small town officials.

This guidebook was funded by a grant from the W.K. Kellogg Foundation of Battle Creek, Mich.



Note: This symbol, the logo of NATaT's National Center for Small Communities, marks passages that the editors consider to be of special importance.

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	In order to keep on schedule for meeting the various ADA structural and non-structural requirements, local governments are required to conduct a self-evaluation of programs, activities and facilities. By including persons with disabilities in the evaluation process, many local governments have been alerted to creative, low-cost solutions to complying with the ADA.	
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President Bush signed the historic Americans with Disabilities Act on July 26, 1990, to eliminate discrimination against the estimated 43,000,000 Americans who have disabilities. Small local governments are primarily affected by the ADA in the areas of local government services and employment. Looking on as the president signs the bill are, standing left to right, Rev. Harold Wilkie; and Sandra Parrino, National Council on Disability; and seated left to right, Evan Kemp, chairman, Equal Employment Opportunity Commission; and Justin Dart, chairman, President's Committee on the Employment of People with Disabilities.



Joyce C. Naltchayan, The White House

chapter 1

what is ADA?

what is ADA?

ADA is short for the Americans with Disabilities Act, landmark legislation signed into law on July 26, 1990, by President Bush. Many individuals with disabilities think of ADA as an emancipation proclamation, because it prohibits discrimination on the basis of disability in so many areas of American life—access to a job, transportation to employment and leisure activities, even effective use of telephone communication by individuals with hearing impairments.

Titles I and II of the ADA affect local governments. These provisions require that all local government programs and services, including employment, be open to individuals with disabilities just as they are open to individuals without disabilities. Most of the ADA provisions affecting local governments became effective January 26, 1992.

In this introductory chapter, you will learn through a series of questions and answers what ADA does and does not require from local governments and find out why a self-evaluation is so important. The remainder of the workbook builds upon this introductory information and offers practical tips, checklists, illustrations and alternative ADA compliance strategies.

haven't I heard this language before?

Much of the ADA will be familiar to local governments, because the law very closely mirrors Section 504 of the Rehabilitation Act. Since 1977, all towns, cities and counties receiving federal funds have been required to comply with Section 504—the “handicap rules.” When the General Revenue Sharing program was eliminated in 1986, most small local governments severed their

only financial ties with the federal government and, therefore, were no longer obligated to comply with Section 504. Still, many communities continued to open up government programs and employment opportunities as requested by local disabled citizens or required by state disability rights laws.

If your local government maintained the philosophy and innovative program access ideas of Section 504, you will be far ahead in meeting ADA requirements. If no one in your town has given much thought to accessibility since General Revenue Sharing went out of existence, now is the time to dust off your old self-evaluation (if you did one!), re-establish a local disability advisory committee and use this guidebook to get started.

isn't ADA really an affirmative action law?

No, and nothing in the ADA forces local governments to provide services to ineligible persons or to hire unqualified workers. The intent of ADA is to eliminate illegal discrimination—to level the playing field—not to serve or employ less qualified disabled individuals before, or in place of, more qualified non-disabled persons.

We use good judgment everyday to discriminate—to distinguish between alternatives and make sound decisions. The ADA actually promotes sound decision-making, because it prevents local governments from refusing to serve or employ an individual simply because he or she has a disability.

doesn't ADA promote preferential treatment?

No. The ADA is really a well balanced law. The U.S. Department of Justice (DOJ), which issued the Title II regulations, encouraged public reaction to its proposed rules and received over 10,000 pages of comments from

local government, private business and individuals or organizations representing persons with disabilities. In consideration of these views, DOJ incorporated a considerable amount of flexibility into the ADA requirements.

Some portions of the law are prescriptive (e.g., the requirement that individuals with hearing impairments have direct telephone access to vital emergency services, via a telecommunication device for the deaf (TDD) or a similar telecommunications device). But most ADA provisions either offer a range of options (e.g., the myriad of ways in which programs can be made accessible even if buildings are not) or require action by local government only if and when a citizen with a disability makes a request (e.g., a deaf person requests a sign language interpreter so that she can participate in an important public hearing on September 10; but local government is not automatically required to have an interpreter at each and every meeting of the local board).

why should we comply with ADA?

Local governments should take ADA seriously, for good reasons. First, it's the right thing to do. Small towns have always prided themselves on being closest to the people, and many people in small communities have disabilities—older people who need a little extra help, war veterans who lost a limb or other faculties.

Second, the law's intents are well justified. After decades of economic and social disenfranchisement, individuals with disabilities appealed to Congress to put more teeth into anti-discrimination laws.

The numbers speak for themselves. Although 12 percent of the general population has income below the poverty level, 30 percent of the disabled population lives in poverty. Only one-third of all adults with disabilities are working, leaving a staggering unemployment statistic of 66 percent.

WHAT TYPES OF INDIVIDUALS ARE PROTECTED BY ADA?

The ADA has been misinterpreted by some as encouraging the hiring of unqualified individuals—for example to operate dangerous road equipment. Remember that the ADA does not force employers to hire **unqualified** applicants. Nor does the ADA prevent the manager of a municipal swimming pool—a program of local government—from barring a disruptive alcoholic swimmer. Local governments may serve individuals if they meet the program's eligibility requirements, and government may employ people if they can perform the essential functions of the job in question. Chapters 3-4 explain these concepts in greater detail.

In addition to protecting a person who actually has a disability, ADA shields individuals who **have a record of an impairment** or who **are being regarded as having such an impairment**. For example, suppose Mary had breast cancer but has fully recovered. If Mary's employer refused to allow her to return to work—fearing that the cancer may recur and Mary would miss more work—Mary would suffer discrimination due to her **record of having an impairment**. She would have an opportunity to file a complaint under the ADA.

Sometimes people are **labelled as having a disability** based on inaccurate records, and this label is used to discriminate illegally. ADA protects individuals who suffer discrimination based on such records. For example, especially in the past, "problem children" were mis-classified by school officials as having mental retardation or mental illness. ADA protects a child from experiencing discrimination years later because a school record contains this mis-diagnosis.

People may be **regarded as having a disability** when there is no basis for such a belief. For example, rumors may imply that Jim has AIDS, yet he does not. Jim is

fired because of the employer's fears of spreading AIDS at the work place. Jim would have grounds for filing a complaint under ADA, because he suffered discrimination based on the erroneous belief that he had AIDS, a disability.

Another situation arises when an individual has a disability that poses no limitations, but someone else believes such limitations exist. For example, John has epilepsy. Thanks to regular medication, he has not had a seizure in eight years. Nevertheless, an employer refuses to hire him because he's concerned that the stressful nature of the job will cause John to have seizures. The ADA protects John from discrimination caused by such assumptions or speculation.

A similar situation involves discrimination based on attitudes. A town government prohibits Ann, a local resident who has severe facial burns, from attending a town council meeting because of concerns about the negative reaction of other people. The only thing preventing Ann from participating is the leaders' fear about negative public reaction to her impairment. This attitude and resulting action triggers ADA's protections.

Finally, non-disabled people may suffer discrimination in employment situations because they are **related to or associated with someone who has a disability**. This qualification applies to employment situations only. For example, it is illegal for the parent of a child with cerebral palsy to be rejected for a job because the employer fears that she will take excessive leave to care for her child. Likewise, it is illegal for the staff of the town swimming pool to deny entry to a nurse known to work with patients who have with tuberculosis. Discrimination results in these cases, even though the person being restricted does not have a disability.

Not all individuals with disabilities are able to work, but most could and would like to lead productive lives. Most Americans seem to support these ambitions. A 1991 Louis Harris survey found that eight out of 10 Americans believe that people with disabilities would rather have a job than stay at home and live on disability payments.

Third, ADA is the law, and it will be enforced. Organizations representing people with disabilities are watching, and federal agencies (such as DOJ) are preparing to receive more than a few administrative complaints. Furthermore, ADA gives individuals a right to sue.

who is an "individual with a disability?"

ADA protects **individuals with disabilities**, which includes a wide range of physical and mental impairments. Generally, these impairments substantially restrict a person's ability to engage in important life activities—walking, seeing, hearing, speaking, breathing, learning, caring for one's self, performing manual tasks and working.

Common impairments include blindness, deafness, paralysis, missing limbs, cancer, contagious diseases (e.g., HIV infection/ AIDS, hepatitis, TB), mental disabilities (e.g., mental retardation, Down syndrome), mental illness (e.g., schizophrenia, depression), neurological impairments (e.g., epilepsy, cerebral palsy, learning disabilities) and **recovering** alcoholism or drug abuse.

it sounds like ADA protects everyone. does it?

No, not everyone is covered underneath the ADA umbrella. Pregnant women, smokers and persons affected by certain behavioral disorders (e.g., compulsive gambling, kleptomania) are not protected by ADA. Age is not a disability, so ADA does not shield senior citizens from discrimination. (Other federal and state laws, however, protect people from age discrimination.) Individuals who are homosexual or bisexual are not covered by ADA, because these are not disabilities. Simple physical characteristics, such as having green eyes or brown hair, are not considered to be physical or mental impairments. Nor does ADA extend protection to persons claiming environmental, cultural or other disadvantages, such as having a prison record or being poor.

Prohibitions concerning alcohol and illegal drug use at the work place are perfectly acceptable under the ADA. The law protects drug abusers only if they have completed, or are in the process of completing, a rehabilitation program and currently do not use illegal drugs. Alcoholic employees who are impaired in their functioning due to alcohol consumption are not shielded from reprimand. However, the ADA does protect a recovering alcoholic who performs well on the job but is, nevertheless, dismissed or demoted by his employer. The ADA is neutral on drug testing.

Although ADA does not explicitly prohibit discrimination against these groups, other local, state or federal laws may. Check with your town or township attorney to learn about other anti-discrimination laws prevailing in your area.

our state has an ADA-like law; which prevails, the ADA or our state law prohibiting discrimination on the basis of disability?

ADA does not invalidate or limit the remedies, rights and procedures of any federal, state or local law (including common law) that provides equal or greater protections to individuals with disabilities. Many states have enacted laws protecting people with disabilities.

Some state laws contain anti-discrimination provisions that are stricter than ADA and would, therefore, prevail over ADA. Contact your state governor's committee for disabled individuals or state human relations commission to find out what laws are in effect in your state.

are we going to have to hire a high-priced consultant or attorney to understand and meet the requirements of ADA?

Absolutely not. Be aware that the mail boxes of local governments—and businesses of all types and sizes—are being flooded with threatening letters and flyers from "ADA experts" who probably know no more about ADA than you will when you finish reading this guidebook. They warn, "hire our consulting firm or buy our \$400 manual today—or watch your township budget be depleted by outrageous discrimination suits!" Be cautious about hiring high-priced ADA consultants to "develop an ADA compliance plan for your town."

So-called experts can easily play on people's fears, because the public is generally misinformed about the ADA. A recent study found that nearly half of those who heard of the ADA incorrectly believed that the act requires "all employers, regardless of cost, to make whatever changes are necessary to accommodate a qualified disabled person." In fact, under the law, employers (including local governments) must make only **reasonable** accommodations that do not result in an **undue hardship** for the employer.

Of course, there are also many excellent ADA resources (see the appendices of this guidebook) and reasonably priced ADA training opportunities available across the country. Contact your state association of townships, cities or counties or one of the 10 regional ADA centers listed in appendix b for information about ADA training in your area. Many agencies and associations are sponsoring one-day ADA workshops or mini-sessions at annual conferences.

how expensive will it be for our town to comply with ADA?

We offer no guarantees, but if you follow the suggestions offered in this guidebook and consult extensively with disabled citizens in your area (see chapter 6 for the "how to's"), ADA compliance costs should not be excessive. The Job Accommodation Network, an excellent free information source for low-cost program and worksite modification ideas, estimates that 30 percent of all accommodations cost nothing, and 50 percent cost less than \$50. Your most immediate outlay will be to purchase a telecommunication device for the deaf (TDD), or a similar device, to give individuals with hearing impairments direct access to emergency services. TDDs cost between \$200 and \$400, generally about \$250.

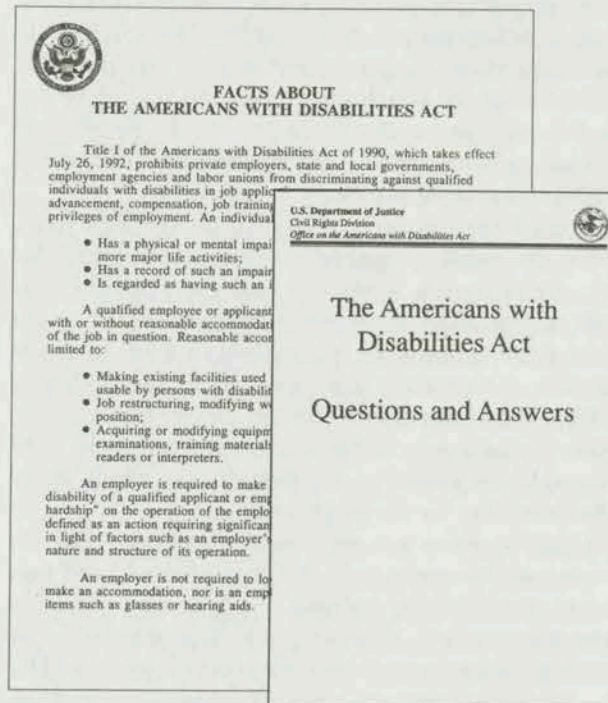
Of course, the exact expense your town or city will incur depends upon the number and extent of modifications and accommodations necessary to make programs and individual employment situations accessible. (Remember...employment accommodations must be reasonable and are not required until or unless a qualified applicant or employee requests them.) The costs also will be lower for many towns that already have made adjustments and provided accommodations for persons with disabilities.

where do we start? who can help?

Start right here, by reviewing this guidebook and creating an advisory committee comprised of local government representatives and individuals with disabilities. A local advisory committee can offer critical technical advice, be a forum for the exchange of ideas, generate good will and recommend effective, low-cost ways to correct barriers facing persons with disabilities.

Next, engage the committee in a self-evaluation exercise, as outlined in chapter 6. ADA gives local governments one year, beginning January 26, 1992, to conduct a self-evaluation—to evaluate current services, policies and practices, to identify anything that violates the law and to develop and implement a transition plan. This is an essential "big picture" exercise, and it will ensure that your limited ADA-expendable funds are spent wisely. The self-evaluation approach your town followed several years ago under General Revenue Sharing may help guide your work, but the data itself is probably outdated by now.

Although local governments have until January 26, 1993, to complete the self-evaluation and make necessary non-structural changes, this one-year allowance does not stay the effective date of the statute. Local governments are subject to ADA as of January 26, 1992.



There are a number of free resources to help local governments comply with the ADA provisions and to educate both citizens and employees about the new law. Many of these resources and their availability are listed in the appendices of this book.

chapter 2

a tale of two towns

It's often stated that you can't legislate feelings. Yet full implementation of the Americans with Disabilities Act (ADA) depends largely on persons without disabilities understanding how their attitudes influence the ways that local governments provide services and/or employment opportunities to persons with disabilities. "A tale of two towns" contrasts the attitudes and actions of two fictional communities as they serve citizens with disabilities.

"Laws and regulations can tell people what they must do and the consequences of adhering to such laws. But there are no laws which can dictate how a person feels when carrying out those responsibilities."

CHARLES GOLDMAN, ATTORNEY
AND EXPERT ON DISABILITY ISSUES

Since the 1970s, federal and state laws have precipitated many changes for people with disabilities—ramps, widened doorways, designated parking places, amplification on public telephones, lowered drinking fountains and so on. But as the physical barriers have come down, people with disabilities continue to face a more challenging, invisible barrier: our discomfort, played out in negative attitudes towards people who look, act or move from place to place differently from those of us without disabilities. These attitudes may arise from fear or simple lack of knowledge about disabilities, and they are usually unintended.

The following narrative contrasts the attitudes and actions of two small towns as they design services, benefits and employment for individuals with disabilities. Although the leaders of both towns had the best of intentions, we see the damage to dignity and opportunity as one town "cares for its handicapped."

This fictitious tale could easily be real, and it says a lot about the invisible barriers yet to be eliminated.

In the Town of Superior, Mayor Smith is very concerned about the community's handicapped people. He claims that his personal experience, as the parent of a retarded child now living in a special home, has led him to know a lot about what they feel and need.

Mayor Smith says Superior takes care of its own; he points to three recent examples of helping the handicapped. When a veteran of the Persian Gulf War returned with a disabling injury, the town's churches took up a collection for his wife and family. Although it wasn't possible to re-employ the young man—he had been the town's road maintenance supervisor—the mayor and his wife visited the family, brought several meals and worried about the young man's depression.

Last summer, when Mr. Smith cut the yellow ribbon at the town's new swimming pool, he announced an exciting new program: a special water therapy class for handicapped children and adults, supervised by a volunteer lifeguard. The pool stays open late one evening per week just for this class, so that the regular swimmers do not get in the way of the special swimmers. The recreation director says it's better this way. Otherwise, normal children are likely to make fun of the handicapped kids and ask embarrassing questions.

The town's senior citizen lunch program, held in a local church basement, is now serving Mrs. Cummins, who is confined to a wheelchair. A friend who comes regularly for lunch packs the meal in plastic containers and delivers it to Mrs. Cummins' home. That way, Mrs. Cummins doesn't need to worry about dressing and coming out in inclement weather.

None of these accomplishments cost the taxpayers a

cent, and that's why Mayor Smith is opposed to installing a TDD (telecommunication device for the deaf) in town hall. He claims that his hearing isn't what it used to be, but he doesn't know anyone in town who is deaf.

In the Township of Independence, Supervisor Johnson admits that he knows very little about how best to serve citizens with disabilities. He acknowledges that the township is becoming increasingly elderly, and

many older residents have one difficulty or another. He knows of one veteran who walks with a limp and another who has limited use of his right arm, but he doesn't pretend to be a disability expert. For that reason, Supervisor Johnson and his fellow officials established a local advisory committee, that included persons with various disabilities, to evaluate the township's current services and policies and recom-

Many disabilities are not visible or otherwise apparent but nonetheless limit a person's mobility or ability to read standard size print, for example. Thousands of older Americans are benefitting from the new ADA requirements, although they have never requested an accommodation from their local government or public transportation system.



Maguire-Reeder Ltd.

10 commandments of etiquette for communicating with persons with disabilities

1. When talking with a person with a disability, speak directly to that person, rather than through a companion or sign language interpreter who may be present.
2. When introduced to a person with a disability, it is appropriate to offer to shake hands. People with limited hand use or who wear an artificial limb can usually shake hands. (Shaking hands with the left hand is an acceptable greeting.)
3. When meeting a person with a visual impairment, always identify yourself and others who may be with you. When conversing in a group, remember to identify the person to whom you are speaking.
4. If you offer assistance, wait until the offer is accepted. Then listen to or ask for instructions.
5. Treat adults as adults. Address people who have disabilities by their first names only when extending that same familiarity to all others. (Never patronize people who use wheelchairs by patting them on the head or shoulder.)
6. Leaning or hanging on a person's wheelchair is similar to leaning or hanging on a person and is generally considered annoying. The chair is part of the personal body space of the person who is using it.
7. Listen attentively when talking with a person who has difficulty speaking. Be patient and wait for the person to finish, rather than correcting or speaking for the person. If necessary, ask short questions that require short answers, a nod or a shake of the head. Never pretend to understand if you are having difficulty doing so. Instead, repeat what you have understood and allow the person to respond. The response will confirm or correct your understanding.
8. When speaking with a person using a wheelchair or crutches, place yourself at eye level in front of the person to facilitate conversation.
9. To get the attention of a person who has a hearing impairment, tap the person on the shoulder or wave your hand. Look directly at the person and speak clearly, slowly and expressively to establish if the person can read your lips. Not all people with hearing impairments can lip-read. For those who do, be sensitive to their needs by placing yourself in the light source and keeping hands or food away from your mouth when speaking.
10. Relax. Don't be embarrassed if you happen to use accepted, common expressions such as "See you later," or "Did you hear about this?" that seem to relate to the person's disability.

These 10 commandments were adapted from many sources as a public service by Karen Meyer, National Center for Access Unlimited, Boston, Mass.

mend necessary changes to the township board.

The committee conducted a community survey, inspected all township facilities and identified several areas in which township programs and services could be made more accessible to people with disabilities.

First, they relocated the senior citizen lunch program to the first floor of the old township hall and installed a ramp built by volunteers. Two elderly women, one who uses a wheelchair and another who uses a walker, can now join the lunch time social hour. Young mothers, who stroll their babies into the Tuesday morning playgroup held at the hall, also appreciate the ramp. So does the man who delivers the bulk food supplies for the lunch. No one seems to miss the stairs.

Second, they dedicated \$250 from their pancake supper fund-raiser to purchase a TDD (telecommunication device for the deaf) for emergency services. People with speech and hearing impairments now can call the fire, rescue or police directly and receive immediate attention. A member of the township board questioned this expenditure, since no one knows of a deaf or speech impaired resident in Independence, but Supervisor Johnson defended the committee's recommendation. Who can be absolutely certain that Independence is not home now, nor will be in the future, to someone who has, or might develop, a hearing or speech impairment? And a committee member stressed that once TDDs become prevalent in public and private places, the devices will also appear more frequently in the homes of disabled citizens.

Third, the township joined with a local service club to add accessible equipment to the neighborhood playground. Children with disabilities can now play side by side with other children. The mother of a young boy with cerebral palsy says that the playground has become a unique learning place. "Kids ask questions about Mark's wheelchair, and he answers them," she says.

Supervisor Johnson is most proud of the township's relationship with Stan Mills, a veteran injured in the Persian Gulf War who no longer has use of his right leg. In order to return to his road supervisor job, Mills re-examined the road maintenance equipment and requested that the township make a few adaptations. It turns out that he can operate several of the vehicles with his left leg only.

Suppose that you are a person with a disability. Which town would you prefer to call home? The Town of Superior has adopted a paternalistic attitude towards people with disabilities. The mayor says that he knows what "they" need, but he has never asked "them." The

veteran is pitied, but he is not offered gainful employment. Children with disabilities are segregated. A child who asks questions about the girl who "walks funny" is likely told to hush and pretend that she is not there. It is assumed that the elderly lady who uses a wheelchair prefers not to go out, but no one has asked her. Nor has anyone considered whether the lunch program could be moved to an accessible site. The TDD is deemed costly and unnecessary, regardless of the danger a person with speech or hearing impairments might encounter when calling for emergency help.

Things look and feel quite different in the Town of Independence. The supervisor does not claim to know what is best for other people. He consults with local experts and gets specific recommendations. Few of the changes cost a lot of money, and other sponsors helped foot the bill. This town practices inclusion, to the benefit of everyone.

language conveys attitude

With all of the stress on what a person with a disability cannot do—walk, hear, see, talk—it's no wonder that we fail to appreciate what a person with a disability can do. Our language reflects this attitude. He is called a "handicapped person" rather than "a person who uses a wheelchair." The first term magnifies the disability and diminishes the person's dignity. The second term puts the person first, and merely explains that he or she uses a particular thing.

Does our language really matter all that much? Aren't we exaggerating the importance of a few words?



Steve Nehl, The Oregonian

Traditionally, many communities have maintained separate schools and other activities for persons with disabilities. But even for these separate services, participation has been limited by lack of accessible transportation and accessible sites. The ADA is based on the concept of "mainstreaming" whenever possible, enabling persons with disabilities to choose to work, shop, receive benefits and services and enjoy leisure without barriers and a sense of being segregated.

Consider how these labels might apply to you.

Are you a "sight crippled person" or a person who wears eye glasses? Are you a "blood pressure victim" or a person who takes blood pressure medicine? Are you an "asthma sufferer" or a person who has respiratory difficulty? Would you prefer to be a person

"confined to a wheelchair" or a "person who uses a wheelchair?"

If the ADA helps everyone to be less fearful and more knowledgeable about disability, it will accomplish a great deal. And we will see the results, in our actions and in our language.

chapter 3

opening up programs and services

Cracked and uneven sidewalks which are merely an inconvenience for walking and sighted pedestrians become dangerous barriers to persons who are blind or who use a wheelchair. The ADA requires that the entrances to local government buildings and facilities housing local government programs and services be accessible to persons with disabilities and that the entrance ways be clearly marked.



James Ballard

A FEW IMPORTANT TERMS

auxiliary aids and services: the range of devices and services which help persons with hearing, speech and vision impairments to communicate effectively with others (e.g., interpreters, telecommunication devices for the deaf [TDD], readers, etc.).

programmatic access: the assurance that programs, services and benefits are accessible to people with disabilities, even when the buildings or facilities which house such programs are not; this is the primary goal of Title II of the ADA.

undue financial or administrative burden: a proposed modification that would result in significant difficulty for or expense to a local government; this is a very strict standard; the fact that a proposed modification would require an expenditure or result in additional administrative labor does not necessarily qualify it as an undue financial or administrative burden.

fundamental alteration: a program modification that substantially changes the purpose or mission of a specific program, creating a new program.

Chapter 3 is a step-by-step explanation of Title II of the Americans with Disabilities Act (ADA). You will learn what modifications to your local government's programs, services and benefits may be necessary to fulfill ADA requirements. This chapter should serve as a comprehensive reference as you review your local government's deficiencies, conduct a self-evaluation and plan appropriate, affordable responses, with help from the disability community.

what activities of local government are covered by ADA?

ADA applies to all local government programs, services and activities, regardless of whether the city or town receives federal funding. ADA affects:

- the facilities and sites of government programs, services and activities (e.g., playgrounds, parks, swimming pools, bookmobiles, mobile health screening units, polling places)
- the facilities and activities of the executive, legislative and judicial branches (e.g., city hall, municipal building, state legislature, county courthouse)
- roads, parking lots, sidewalks and pathways
- communications with the public (e.g., telephone contact, office visits, use of government facilities)
- access to government benefits and services (e.g., public aid)
- courses and examinations offered by government entities (e.g., professional licensing, certification)
- public transportation services

A town government's ADA responsibilities extend to programs, services and activities provided by a contractor for the benefit of the general public. Thus, a town government that arranges for private entities to provide trash collection, fire fighting and emergency medical services or recreational programs must ensure that such services and activities are available to citizens with disabilities.

what does ADA prohibit?

ADA prohibits illegal discrimination. Simply stated, a government program or agency may not refuse to allow a person with a disability to participate in or gain the benefits provided by any service, program or activity merely because the person has a disability. Illegal discrimination takes many forms. Some instances of disability discrimination result from animosity towards persons with disabilities. But most discrimination results from physical barriers or from the attitudes of non-disabled people. Most non-disabled people never realize the barriers that people with disabilities face or the effects of such discrimination. Nor do they realize how misinformation, fear, stereotypes or "good intentions" can result in limitations on persons with disabilities.

In order to eliminate discrimination, government programs must alter policies and practices that are based on

discriminatory attitudes and, when necessary, remove physical barriers. This chapter offers many illustrations of physical and attitudinal barriers, as well as a variety of creative methods for erasing them.

The chapter is divided into four sections:

- eligibility, participation and changes in attitudes
- program accessibility through creativity, devices and services
- building accessibility
- enforcement provisions

Within each section, you will find a number of steps to assist you in understanding the ADA and in taking the appropriate actions to be in compliance.

a note...

The U.S. Department of Transportation (DOT) has issued extensive ADA requirements regarding accessibility to transit services (bus, van, limo, rail, train and commuter rail systems) operated by either the private or public sector. The two standards are somewhat different, with public sector services covered under Title II of the ADA and private sector services under Title III.

While most small cities and towns do not operate their own transit systems, remember that the ADA requirements also apply to the private entities that provide public transportation services. If this service is provided under a contract with one or more local governments, the local government(s) must ensure that the contractor is in compliance with the public sector ADA requirements.

The ADA makes an important distinction between fixed route and demand-response services. Fixed route service is provided to the passenger at scheduled times and locations, with no action or request needed to initiate the service. Demand-response service is provided by request only.

If your local government operates a fixed route bus service, review the ADA transportation regulations (*Federal Register* September 6, 1991), contact the Department of Transportation or consult with transportation experts. Public fixed route transit systems are required to become fully accessible to all persons with disabilities. The primary means of accomplishing this objective is the ADA mandate that all new vehicles (those purchased after August 26, 1990) and all newly constructed transit stations and platforms must be fully accessible. Vehicle accessibility standards have been updated since 1991 and may be again in the future. Be certain to learn the latest requirements before buying or leasing transit vehicles. Localities must also demonstrate a good faith effort to meet the ADA accessibility standards when purchasing used vehicles. All transit vehicles re-manufactured after August 26, 1990, must

ELIGIBILITY, PARTICIPATION AND CHANGES IN ATTITUDES

eliminate unnecessary eligibility requirements

Individuals with disabilities may face discrimination by the imposition of eligibility requirements that screen out persons with physical or mental impairments. Local government programs that impose eligibility requirements must be reviewed to ensure that they do not intentionally or unintentionally deprive individuals

...about transportation services

meet the current ADA accessibility standards. The ADA does not require that existing vehicles be retrofitted to install lifts or other accessibility features.

Public transit systems that provide fixed route services are also required to provide comparable paratransit service for those persons whose disabilities do not enable them to use the fixed route system. The level of service is judged to be "equivalent" according to the following six criteria: same service area; comparable response time; comparable fares; comparable service days and hours; meets requests for any trip purpose; and sets no service limits because of capacity constraints. Full compliance is to be achieved by January 26, 1997.

If your local government operates a demand-response bus service (e.g., special transportation services for the elderly), these requirements apply:

- If the bus(es) currently in use is/are not accessible to individuals with disabilities, the system does not have to make these vehicles accessible, nor provide comparable transportation services to persons with disabilities via taxi cab, van or other arrangements.
- When a demand-response system purchases one or more new vehicles, however, the system is subject to ADA transportation requirements and must provide "equivalent service," as described above. If only one vehicle is purchased, it must be lift-equipped. But other new vehicles do not need lifts if the service now provided to persons with disabilities is equivalent.

Once a comparable system is established, a local government should complete, and maintain on file, a "certificate of equivalent service" explaining how it will provide equivalent service and operate a transportation system which, when viewed in its entirety, is accessible. This certificate is required by ADA and is recommended to substantiate the local government's action, should a discrimination claim arise.

with disabilities of the opportunity to obtain services or benefits.

Some programs have minimal requirements, or no eligibility requirements at all, and thus rarely have a permissible reason to deny services to persons with disabilities. For example, a consumer agency that provides written information on request may not refuse to provide similar information to persons with low vision, merely because they need to receive the information in a large type format.

The same reasoning applies to a woman with cerebral palsy who wishes to use the town library. This woman has a severe speech impairment, loss of muscular control and sometimes drools. The library cannot deny her borrowing privileges because the librarian has difficulty understanding her or believes that other patrons might be uncomfortable seeing the woman.

A driver's license is not the only means of identification. Some programs may require that an individual produce a driver's license as identification before being admitted to the program. Alternatively, a driver's license may be required to accompany a check when registering for an event. In both situations, a person with a disability who cannot obtain a driver's license (for example, a blind person) will not be able to meet this condition of participation. A simple solution is to require a form of identification but not specify what form it must take. Forms of identification besides a driver's license can include a birth certificate, passport, "non-driver's ID" or credit card. The key here is to identify and replace requirements or conditions that tend to exclude or adversely affect persons with disabilities.

An individual with a disability—just like an individual without a disability—must meet the essential eligibility requirements for the program or activity in question.

Examples of essential eligibility requirements include:

- an entry or filing fee (e.g., museum, court)
- maximum income levels (e.g., public aid)
- age (e.g., summer camp programs)
- fare (e.g., public transportation)

Most government programs and services are open to the public and thus have few, if any, eligibility requirements. Persons with disabilities must qualify for these services or benefits just as others qualify.

A government program cannot impose physical or mental requirements that, by definition, would exclude a person with a disability, except in the limited circumstances that the physical or mental requirements are absolutely necessary. These exceptions are rare.

For example, it is not an essential eligibility requirement that a person be able:

- to see so that she can read the application form to apply for public aid
- to hear so that she may use the telephone to seek information from a government agency that routinely provides information over the telephone

- to climb a flight of stairs to enter a courthouse
- to speak in order to ask for assistance

Government programs sometime impose physical or mental requirements as a safety measure. **Safety requirements based on actual risks are permissible, but those based on speculation, stereotypes or generalizations about persons with disabilities are not.** For example, the motor vehicles department can require a designated level of sight to obtain a driver's license, because vision is a legitimate safety requirement to operate a car.

Safety concerns are legitimate, but remember that such concerns have been used to discriminate, based on unreasonable fears that persons with disabilities are more likely to become injured or to injure others. For example, a public swimming pool cannot deny entry to a man with paraplegia because the recreation director fears that he cannot swim. Nor can the director require

animals to assist them. The ADA requires government programs to make reasonable modifications in policies, practices and procedures that deny equal access to persons with disabilities.

Modifying policies or practices, however, should rarely raise the issue of a fundamental alteration or an undue financial and administrative burden. In the example discussed above, admitting seeing eye dogs does not fundamentally alter the uses of the building, interfere with the operations carried out in the town hall or result in a significant difficulty or expense.

practice inclusion; separate programs may discriminate

Persons with disabilities often suffer discrimination through their exclusion from programs serving non-disabled people. Some local officials believe that they are meeting disabled individuals' needs best when they de-

- The township is sponsoring a week's performances of the play, "Our Town." The theater announces in advance that a sign language interpreter will be present at the Tuesday evening performance. This allows persons with hearing impairments to comprehend the performance and share the theatrical experience with non-disabled citizens. The theater does not have to provide an interpreter at each performance, nor upon request if these additional signed performances would cause an undue hardship. If a hearing-impaired person wishes to attend one of the non-signed performances, he or she may. The theater cannot limit a deaf person to the signed performance; the choice belongs to the individual.
- The city recreation department offers a special exercise class for children with mental retardation. The department, however, cannot prohibit children with mental retardation from participating in other children's exercise programs for which they are qualified. Alternatively, there could be one

exercise program for all children at which modifications could be made to serve a youngster with mental retardation.

- The county sculpture museum considers how to provide meaningful tours to persons with vision impairments. Although museum rules prohibit visitors from touching the sculptures, touching is the only way that many blind persons can enjoy the exhibits. Ideally, persons with vision impairments would take the regular tours and receive assistance in feeling the sculptures. If an integrated tour is too difficult, the museum could establish and advertise one tour a week for persons who are blind that enables them to touch the artifacts on display. Persons with vision impairments, however, must be welcome to take the regular tour if they wish.

Since there are so many ways to provide access to persons with disabilities, and most of these aids and services can be provided in an integrated setting, there should be very few occasions when a separate program for individuals with disabilities is necessary.



The ADA protects persons with disabilities from discrimination in all areas, including tests designed to promote safety. Local recreation departments can require a swimming test before a swimmer enters a pool or a lake, but only if it is administered uniformly to participants with or without disabilities.

that the man take a swimming test before allowing him pool privileges, unless everyone is required to pass a swimming test, regardless of disability.

eliminate policies that are blatantly discriminatory

Some policies are blatantly discriminatory. For example, requiring a person with mental retardation to be accompanied by a non-disabled person on a city bus is a discriminatory policy. Many policies and procedures, while seemingly neutral, can have an adverse impact on persons with disabilities by preventing them from participating equally in a program or service. For example, the town hall may prohibit animals from entering the building. Legitimate reasons support this policy, but its enforcement will either bar entry to blind people who use seeing eye dogs or require these individuals to enter without this necessary aid. The town can amend the policy to exempt individuals with disabilities who use

sign separate programs to serve only this population. People offer various reasons to justify such programs:

- "Persons with disabilities prefer to be with others like themselves."
- "They will get much more out of a special program designed specifically for disabled people."
- "It is more cost-effective to serve persons with disabilities in a separate program."

Individuals with disabilities may be offered the illusion of choice: a segregated model program for persons with disabilities that incorporates optimum services, or an integrated program where the needs of persons with disabilities are not met.

ADA requires local governments to provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity. Here are a few illustrations:

POLLING PLACES: MUST THEY BE MODIFIED OR MOVED?

The accessibility of polling places has received renewed attention since the passage of the ADA, although earlier federal legislation established minimum standards for public buildings, schools and other community facilities which may be designated as polling places and/or election sites. Many local officials recognize that their town and township halls, built years ago, do not meet current federal and state standards, which must be followed in all new building and renovation plans.

Since the passage of The Voting Accessibility for the Elderly and Handicapped Act of 1984, most state election commissions have sent an annual survey form to all local governmental entities with election and polling responsibilities. The form calls for local officials to determine accessibility for voters with disabilities from the parking area to the voting area (including the voting machines themselves).

Many federal and state laws include standards for the location, size and surface materials of parking places, for the width and slope of walkways and paths leading to the polling place, for interior and exterior ramps (if needed) and for the path of travel inside the polling place. These standards closely follow both current ADA requirements and the earlier ones for Section 504, on which subsequent legislation is based.

Since local governments that received federal General Revenue Sharing (GRS) funds had to comply the 504 requirements, many municipal facilities are already accessible or require only minor changes to meet both the ADA requirements for government

services and the federal polling place requirements.

What happens if a polling place is found to be inaccessible? Federal law not only allows a polling place to be moved to an accessible location within the jurisdiction (such as a school), but, if necessary, to a location outside the precinct boundaries. Any changes, however, should first be cleared with the state election commission, which may have established state-specific requirements about where and when such changes can be made. The second option, of course, is to complete the required structural and non-structural changes (signs to accessible entrances, large type voting instructions, etc.).

Federal law does permit people with disabilities to vote by using absentee ballots. It also allows election workers to deliver ballots to disabled persons in their vehicles in the parking lots of inaccessible polling places. (Unpaved parking lots and walkways may make a facility inaccessible to people who use wheel chairs.) Such practices, however, may already be restricted by state law and are certain to be more closely scrutinized under ADA, which discourages separate treatment of persons with disabilities.

In summary, if local leaders contemplate any modifications of a current site, change of location or exemptions involving a local polling place, these should be discussed with and approved by the state election commission. In addition, as with other aspects of ADA compliance, it is also highly advisable for local governments to consult with persons with disabilities and with disability advocacy organizations.

ensure that services provided through contract meet ADA requirements

The ADA applies to local government programs and services provided under contract by a private or public entity. For example, a town contracts with a private company to collect garbage. Residents are required to put their trash cans by the curb for disposal. A person with a disability may be unable to comply with this rule, so she requests that the trash collector come to the back of her house to collect the garbage. If the company refuses this request, and therefore refuses to collect this woman's garbage, the town will be responsible for a discriminatory action. The local government must instruct the company to change its procedures to accommodate this woman.

Suppose a township contracts with a local church to provide meals to elderly persons in its social hall. If the entrance to the church is inaccessible, qualified persons with mobility impairments cannot be refused service by the food program. The church could install a ramp or negotiate with the township to provide meal service by another means. (See Program Accessibility discussion, beginning below.) Remember that the local government retains responsibility and should work with the church to solve any problems that inhibit service to persons with disabilities.

Simple language can be inserted into standard contracts or grants to ensure that entities serving the public on behalf of a local government comply with the ADA. Contractors may be unfamiliar with the ADA and not know that simple steps can be taken to comply with its requirements. The local government can aid contractors by identifying their ADA responsibilities, inviting contractors to ADA training sessions (see next section) and helping locate sources of information when contractors have questions or concerns that a local official cannot answer.

The following language is provided as a suggestion for inclusion in contracts and grants:

"(Name of contractor or grantee) warrants that it is in compliance with the Americans with Disabilities Act (Public Law 101-336) and that it will, in carrying out the requirements of this contract or grant, comply in all respects with the provisions of the Act and its implementing regulations."

educate staff to treat individuals with disabilities respectfully

The fundamental principle underlying the ADA is to treat each person as an individual. By doing so, you will avoid making decisions based on assumptions, stereotypes or fears. In many ways, this new law reflects the long-standing tradition of small town government—to serve all constituents with respect.

Educating staff (and volunteers) can take many forms, and it need not be a formal, classroom-like training pro-

gram. Staff should be introduced to ADA requirements and learn, or help determine, how local government departments or activities will go about making necessary changes to comply with the law. Training should include a discussion about attitudes towards persons with disabilities and "disability etiquette" (see chapter 2). If possible, invite individuals with a variety of disabilities to participate in the training or to conduct portions of it. This promotes interaction and offers town officials a first-hand account of the barriers facing others.

Law enforcement personnel, and other staff who deal extensively with the public, must learn to distinguish between purposely disruptive actions and certain behaviors caused by disabilities or medications for disabilities. For example, persons with mental illness may take powerful drugs that cause them to fall asleep or occasionally to become disoriented. These side effects should not be mistaken for disorderly conduct. Such mistakes can cause immense pain and embarrassment and could lead to liability claims against the local government.

Persons with disabilities have been subjected to arrest or harassment when law enforcement officers mistake the effects of disability for criminal activity. For example, a person having seizures may be mistaken for one on illegal drugs. An individual with a severe speech impairment may be mistaken for a person who is drunk. Or a deaf person may appear to be resisting arrest when trying to communicate with his hands.

A local government can coordinate its own staff education exercise or co-sponsor training with neighboring towns, a regional council, local disability organization, civic association, chamber of commerce or other local resource groups such as those mentioned in chapter 6 of this guide. Staff may be able to participate in scheduled ADA training at an annual conference of the state association of towns, cities or counties. In some states, the community affairs agency, governor's committee for individuals with disabilities or state human relations commission is offering ADA training.

PROGRAM ACCESSIBILITY THROUGH CREATIVITY, DEVICES AND SERVICES

make programs and services—but not necessarily buildings—accessible

Physical access to a building usually is not the goal, but gaining access to the services or activities in the buildings is. Therefore, ADA does not necessarily require that a government agency make each of its buildings and facilities physically accessible to persons with disabilities. ADA does require that all programs and services housed in a particular building be accessible. "Programmatic access" ensures that services and benefits are accessible, even when a building is not. (See pages 26-28 for a discussion of building accessibility.)

For example, a person who uses a wheelchair wants access to the second floor of the town hall in order to review the property records that are housed there. Since there is no elevator in the town hall, local leaders must look for alternative ways to provide access to the records. One option is to review the layout of the first and second floors. If some of the most requested information is located on the second floor, while rarely used records are housed on the first, the local government could simply exchange the two sets of information, making certain that the first floor location meets accessibility standards. Another alternative would be to have a town employee bring down the desired records. **While access to and within an existing building is always desirable, ADA only requires access to programs or services.**

When programs or services are provided at multiple sites, the degree of accessibility may vary among the sites. Such differences are permissible, so long as the program or service, when viewed in its entirety, is accessible to persons with disabilities.

If a town has one central library and two branches, the ADA does not require that each branch be equally accessible. Alternatively, the ADA does not permit the library system to provide accommodations at only one branch and require all persons with disabilities to use only that branch. Instead, the library must review all three branches, identify barriers to using these facilities and undertake modifications to increase access.

One branch may lack an elevator and thus provide significantly less access to persons with mobility impairments. Nevertheless, measures can and must be taken to make this library's services as accessible as possible. If

the other two libraries have elevators or are accessible by a ramp (the library has only one level), then the entire library system will be viewed as providing access. Although the degree of accessibility may differ from branch to branch, the library system as a whole is accessible.

Curb cuts are required when they are necessary to enable persons with disabilities to have access to local government facilities, programs and services. They should be included in the transition plan that establishes a timetable for compliance with the ADA structural requirements (see chapter 6) and should be made on all curbs that restrict direct access to a municipal facility or activity. There is no deadline, however, for curb cuts on other locally maintained sidewalks (in residential neighborhoods, for example). They must be made only when such walkways are routinely replaced. Local governments that maintain sidewalks in commercial areas should consult with local business leaders to determine when downtown curb cuts must be installed to assist local businesses in meeting the ADA Public Accommodation and Commercial Facilities requirements.

A number of rural public buildings and meeting halls may not have restroom facilities. The ADA does not require that a locality install accessible restrooms in a building in which none currently exist. An increasing number of manufacturers now offer portable facilities which are accessible to persons with disabilities and may be used at parks, public gatherings, etc., as well as at permanent sites. A town must make any new or renovated restroom facility accessible, however, if it does not pose an undue burden.

A government agency does not have to take any action that would result in a fundamental alteration to the nature of the program or an undue financial or administrative burden. Fundamental alteration refers to substantial changes that alter the mission or purpose of a specific program or activity—changes that, in essence, create a new program. Most barriers that exclude or limit the participation of persons with disabilities have nothing to do with the purpose of the programs conducted inside the building. Therefore, towns will confront very few situations in which providing programmatic access will constitute a fundamental alteration.

Let's take, for example, the town-sponsored meal program for elderly persons in a local church. The church has two entrances, and both have a flight of steps. The program sponsors have several options. One would be to find another location that has accessible entrances. (Remember, it should be an accessible public entrance, not the service entrance.) If that is not possible, then the program could determine whether



A number of older town and township halls, designed for monthly or bi-weekly board or council meetings, were built before indoor plumbing was common. For those still in regular use, the ADA does not require the installation of accessible indoor plumbing, unless major renovations are undertaken to the hall itself. State election commissions, however, may determine that the site can no longer serve as a polling place.

a ramp, permanent or temporary, could be installed. If that is not feasible, then a staff person or volunteer could offer to bring the meal out to the individual with the disability while she waits in her car. Finally, the program could offer to deliver the meal to the individual's home.

Notice that none of these options would constitute a fundamental alteration to the purpose of the meal program. The options are listed in the order encouraged by ADA, with preference for options that integrate persons who have disabilities. It makes sense that senior citizens with disabilities want to socialize at lunch time as much as their peers.

Remember, undue burden is a very strict standard. Since programmatic access can often be provided through different means, few instances should arise where all possible means constitute an undue burden.

Whether a particular accommodation constitutes a fundamental alteration or undue burden must be determined by the chief local government official, or her/his designee, to avoid contradictory decision-making by local government personnel. And simply because one particular accommodation constitutes a fundamental alteration or an undue burden does not excuse the town from providing access through other means.

Choose other accommodations that provide access without imposing an undue burden on the program or causing fundamental changes in its purpose.

The greatest limit on designing programmatic access is one's own creativity. There are usually a number of alternatives, some better than others. Consider the library example presented earlier. Programmatic access at the library can be achieved quite easily, by rearranging the books or making a librarian available to retrieve materials from the second floor.

Remember that the alternative(s) chosen should, whenever possible, provide services in an integrated setting. Segregated service must be a last resort, necessary because it is the only way to provide meaningful access to a specific program or activity. Thus, home visits should be used as a means of providing programmatic access only where there is no way to serve the disabled individual along with others.

Individuals with disabilities may be your best architects of these alternatives, because their lives have often demanded creative thinking—to get up the curb, through the door or around the maze of offices. Consult chapter 6 for ideas on consulting with disabled persons in your community.

provide auxiliary aids and services to permit individuals with disabilities to participate effectively in a program

In certain instances, persons with hearing, speech and vision impairments require devices or services to aid them in communicating effectively with others. The ADA refers to such devices and services as auxiliary aids and services. Without such aids and services, individuals with disabilities cannot meaningfully engage in civic activities or seek the governmental services that non-disabled people take for granted.

For example, if a deaf individual wants to participate in a township board meeting, communication will be impeded, if not impossible, without the aid of a sign language interpreter. The ADA places responsibility on the local governing body, not the deaf individual, to provide and pay for an interpreter. (The deaf individual probably should be consulted to determine where and how to arrange for a qualified interpreter.)

It is perfectly acceptable to require that persons with disabilities provide adequate advance notice that they need a particular auxiliary aid or service. Therefore, a town council does not need to provide a sign

language interpreter at each of its meetings, but can require advance notification. There is no point in having an interpreter if no one needs this service. Announcements about the meeting should explain how persons can request auxiliary aids and services.

Suppose a citizen with a hearing impairment notifies the town council that he wants to attend a public council meeting where a proposed property tax increase will be discussed. He requests that the council provide him with a sign language interpreter, but the elected officials instead offer to send him the minutes of the meeting and promise him an opportunity to submit his written views. The council promises to give the same consideration to his views as to those who attend the meeting. Does this arrangement satisfy the requirements of the ADA?

No. The council's alternative deprives the citizen the opportunity to hear the debate and let the audience hear his views. The minutes may not be comprehensive and may omit important nuances and emotion, and this approach segregates the individual from his community. This example underscores the importance of providing aids and services in an integrated, inclusive setting. It also illustrates that communication is a two-way process. The objective is not merely to allow a deaf person

to understand what is being discussed, but also to allow the council and audience members to hear what the citizen thinks.

Several variables will affect the decision about which auxiliary aids or services are necessary, including the type of program or activity, the number of persons with disabilities who need auxiliary aids and services and the costs of different auxiliary aids and services. To the greatest extent possible, persons with disabilities should have the opportunity to specify what type of auxiliary aid or service they desire.

A common theme of the ADA is to give choices to persons with disabilities. There is also an important practical consideration for local governments. For example, if the minutes from city council meetings are made available to the public, and the council decides to make the minutes available in braille for persons with

vision impairments, this auxiliary service will be of no benefit to a visually impaired person who does not read braille. (Many do not.) Such a person might, instead, read large type or listen to an audiotape recording of the meeting. It is far better to give people options than to provide and finance a service that is not widely usable.

If a citizen requests a particular aid or service that would cause an undue burden, or fundamentally alter the program, then the program may offer to provide another aid or service that effectively facilitates communication. Remember, the fact that a particular service or aid costs money does not automatically make it an undue financial burden. A local government can choose to provide the less costly aid or service, so long as it still affords effective communication. For example, providing brochures on audiotape may be significantly less expensive than providing them in braille, yet accom-



Vermont Travel Division

A number of small town services may be located in space furnished by churches and other religious organizations. The ADA requirements for program accessibility apply to all such programs, unless an undue burden would result.

what is, and is not, a fundamental alteration?

In most situations, modifications will not fundamentally alter the program. Here are a few illustrations:

- A teenager with a hearing impairment wants to join the running team sponsored by the township recreation program. The coach believes hearing is essential, because a starting gun is used for races. The teenager may be able to hear the gun; the degree of hearing loss differs for each individual. But let's assume that he cannot hear the gun. Hearing is not a fundamental element of the sports program. A flag or hand signal could be used along with the gun without changing the fundamental purpose of the program.

- The township is offering a resume-writing class for unemployed citizens. People are requested to register in person with the township clerk before January 30. A citizen who uses a cane and has difficulty negotiating sidewalks in snowy and icy conditions calls the town-

ship clerk to request that he be able to register by phone or mail. The registration process is not a fundamental element of the resume-writing class. Phone or mail registration can be permitted without changing the fundamental purpose of the program.

- The city contracts with a social service agency to provide special transportation services for elderly citizens traveling to medical appointments. A blind, elderly woman who does not have a medical appointment requests that the senior bus take her to a nearby retail mall so that she can do her holiday shopping. The program coordinator refuses to transport the woman, because the intent of the program is to aid patients, not shoppers. Providing transportation services to the shopping mall would fundamentally alter the purpose of the program. To deny the woman's request is not discriminatory.

plish the same objective. But remember that the aid or service must offer effective communication that allows the individual with a disability to gain the same information as the non-disabled.

Many states have freedom of information laws which rightfully enable citizens and elected officials alike to have access to past and present documents and records of proceedings. Requests for this type of information in alternative forms (braille, recordings, large type, etc.) could require a substantial commitment of time and funding, particularly for small and rural communities. In its preliminary guidance for compliance with the ADA, the Department of Justice (DOJ) has indicated that it will handle this and similar situations on a case-by-case basis, taking the amount of information and possible alternatives, as well as cost and feasibility, into account. (The ADA does not establish minimum amounts that a locality must spend before it can claim an undue burden.) As with any accommodation of requests from

persons with disabilities, towns and citizens are expected initially to explore solutions such as:

- a willingness by the town to understand the citizen's need and consideration of the alternatives both parties may propose to meet this need
- a clear statement by the town as to what it views as a reasonable modification and why
- a search for how similar situations have been resolved by calling the ADA information line at DOJ, disability organizations, dispute resolution groups, etc. (see chapter 5 and the appendices)

Government programs cannot place a surcharge on a particular individual with a disability, or on disabled people in general, to cover the costs of auxiliary aids or services. Programs can impose a fee on all users of a particular program to cover such costs or increase fees already charged. But if a local consumer office provides free brochures to the public, for example, it cannot charge a fee to provide the same brochures on audio-

COMMON AUXILIARY AIDS AND SERVICES

For persons with hearing impairments:

- qualified sign language interpreters
- note-takers
- telecommunication devices for deaf persons (TDDs)
- telephone handset amplifiers (devices that fit inside the handset and raise the volume level)
- assistive listening devices (devices that increase the sound in large group settings, such as meetings or theaters)
- flashing lights (where aural communication is used, such as warning bells)
- videotext displays (devices that display text that is simultaneously being spoken; can be used where a public address system provides information)

- transcription services (someone transcribes speech into a written format that reproduces everything that is spoken)
- closed and open captioning

For persons with vision impairments:

- qualified readers
- written materials translated into alternative formats: braille, audiotape, large print
- aural communications (bells or other sounds; used where visual cues are used)
- audio description services (through a headset, a narrator describes what the visually impaired person cannot see; used at theatrical performances)

In some situations, providing minutes after a meeting is held may be the only possible approach, and the citizen may agree. But approaches that are seriously deficient in providing effective two-way communication should be used as a last resort. Towns without access to qualified sign language interpreters may face difficulties, especially if other alternatives (such as a simultaneous transcription service) prove too costly. Use of a volunteer interpreter (perhaps a professor or student at a community college who is fairly proficient but not certified) may be permissible under such circumstances.

Another possibility might be the use of a family member to act as an interpreter. But the ADA clearly disapproves of using family members, except in extreme situations. Remember to consult with the disabled individual to determine the best approach.

Suppose the town council meets twice a month, and a

person with a hearing impairment requests that an interpreter be provided at each meeting. Does the council have to grant the request?

No. The council may provide this service. But if providing an interpreter for each meeting would be an undue financial burden, then the council does not have to accommodate this request. The council, however, should provide an interpreter for some meetings (for example, meetings concerning significant issues of wide interest to most residents, such as tax issues). At the other meetings, the council must provide alternative means to enable the deaf citizen to participate effectively. If the person lip-reads, have the person sit up front so that she may read the lips of all speakers. If audience members ask questions, have them come to the front and face the deaf person. Remind all speakers to talk at a normal rate and to face the deaf person at all times.

tape cassette to persons with vision impairments.

If you are uncertain about what types of aids or services may be needed, or where to obtain them, persons with disabilities can help. Local disability organizations may have resources available or may direct you to other sources of assistance. (See chapter 6 and appendices b and c for suggestions.)

establish a system whereby individuals with hearing and speech impairments can communicate with basic services and programs

If a local government program or agency regularly communicates with the public by telephone, then it should install telecommunication devices for the deaf (TDDs), or equally effective telecommunications systems, to communicate with individuals with hearing or speech impairments. The ADA does not specify what type of telecommunication device must be used, because technology is developing at a rapid rate, and TDDs could become obsolete.

Appendices b and c list organizations that can help you identify the range of devices currently available and assess which best meet the needs of your program or agency. None of these devices is difficult to use; a TDD resembles a computer with a keyboard. TDDs generally cost \$200-\$400, depending on which features you choose (for example, a built-in answering machine).

Eventually, some programs and agencies may be able to rely on ADA-mandated telecommunications relay services at no cost to the local government. This service, which all telephone companies must provide beginning July 26, 1993, allows a person with a speech or hearing impairment to call an operator at a relay service, via a TDD or other device. The operator calls the party to whom the disabled individual wishes to speak and relays messages between them. Certain areas of the country already use relay services; check with your phone company to see if the service in your area is operational.

After July 26, 1993, certain government programs can use the relay services instead of installing TDDs or similar devices. However, this alternative is permitted

PHASING IN TDD SERVICE

If a town chooses to phase in installation of TDDs, the first phase should be where the ADA mandates their use—emergency services and crisis hotlines. (See discussion on page 26.) Next, the local government should install TDDs in agencies that have extensive telephone contact with the public—town clerk, public aid office, motor vehicle department, etc.

If a local government concludes that it is not necessary to install individual TDDs at several programs or agencies, it must determine how persons with speech and hearing impairments will be able to communicate with these agencies. One possibility is to have a central TDD, perhaps stationed in the chief elected official's office, which will receive calls and, with help from a staff person, quickly funnel information requests to the appropriate program or individual. If a central local government TDD is not possible, perhaps the town or city could arrange with a nearby TDD owner (e.g., school system, community college, vocational rehabilitation agency) to receive calls on behalf of the local government and to direct the requests back to the town or city.

Because complex arrangements can easily fall apart, a well thought-out plan should be devised on how calls will be handled—how information will be forwarded to the appropriate program or person, and how the response will be directed to the caller. If the messages are not conveyed and acted upon quickly, individuals with hearing and speech impairments will not be well served. The central TDD number must be widely advertised and its function explained.



While the ADA is flexible in many areas, it does require that all local emergency services must be able to receive calls from persons who use a telecommunication device for the deaf (TDD) to communicate by telephone. In addition to purchasing the device (or tying into a 911 system), localities must make certain that a thoroughly trained person is available to receive TDD calls 24 hours a day.

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only if it provides an effective means of communication. A relay service may be inappropriate where citizens wish to discuss confidential or complex matters and speaking through an intermediary would pose difficulties.

In any case, since government agencies must provide communications access beginning January 26, 1992, you cannot wait for relay services to become fully operational. Therefore, local government programs that have extensive telephone contact with the public should install a TDD or similar device immediately. Government officials will need to review the extent to which the public communicates by phone with each agency or program. Among the agencies where telephone communication may be significant, and thus necessitate installation of a TDD, are those dealing with motor vehicles, revenue and taxation, consumer affairs, public benefits, town clerk, libraries and courts. For programs that have only occasional telephone contact with the public, the relay service probably will be sufficient.

install a TDD to make emergency services directly accessible to individuals with hearing and speech impairments

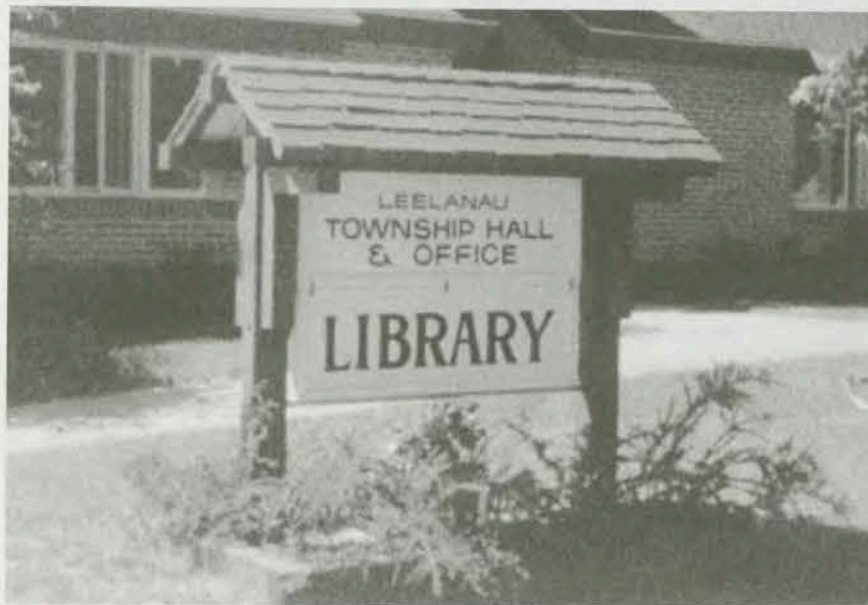
Use of a relay service is not permitted where direct

communication is critical, such as crisis hotlines concerning rape, domestic violence, suicide, etc. Each crisis hotline must have its own TDD. Use of a centralized TDD, with someone acting as intermediary, is not permitted.

Telephone emergency services always must be directly accessible to persons with speech and hearing impairments, through the use of TDDs or similar telecommunication devices. This includes police, fire, ambulance and 911 services. Time is usually a critical factor, and under such circumstances use of a relay service or a message receiving and conveying system could endanger a person's life.

Each emergency service must have its own TDD; it is not permissible to install a TDD at the 911 service but not at the fire station (911 systems receive all emergency calls at a central number and dispatch assistance from appropriate stations).

The guiding rule should be: if the public can phone an emergency service for immediate assistance, then a TDD also must be available. A TDD is not required for non-emergency calls. For example, a fire station might have one telephone for emergency calls and one for general use, such as arranging tours. A fire station would need a TDD only for emergency calls.



The ADA does not require the installation of an elevator in existing town or township buildings, unless major renovations are undertaken. To make library services accessible in a building without an elevator, many localities have moved their most popular books to the first floor and instituted a request and retrieval system for volumes stored in inaccessible areas.



BUILDING ACCESSIBILITY

make minimal necessary modifications

Many individuals with disabilities cannot gain access to a program or service, or can do so only with difficulty, because the programs or services are located in inaccessible buildings. While most people immediately think of stairs as the major culprit, many other structural and architectural impediments affect persons with a variety of disabilities. It is always easier to design an accessible

building from scratch than to go back later and make changes. Thus, the ADA imposes different requirements, depending on whether a new building is being erected or an existing building is being surveyed to identify physical barriers.

The ADA does not require local governments to retrofit all existing buildings, because such efforts would be unduly expensive; this would constitute an undue financial burden. Minor structural modifications, however, may be required in order to provide access to

the services or activities housed within a building. For example, if the town library has two steps at the entrance, the library would need to install a ramp to enable persons who use wheelchairs (or otherwise cannot climb steps) to gain entry. Such modifications are not deemed sufficiently costly to justify excluding persons with mobility problems from using the public library. Such structural modifications must be made as expeditiously as possible, but no later than January 26, 1995.

Suppose a town library has two floors but no elevator connecting them. Would the town need to install an elevator?

No. Installing an elevator in an existing building is a very expensive and burdensome option, and thus significantly different from installing the outside ramp. But does this mean that a person who uses a wheelchair could be prohibited access to the books and services located on the second floor? The answer is no, and the explanation is found in the concept of "program accessibility" discussed on pages 20-26.

Many governments lease the buildings that house their offices or services. Although government agencies are not required to lease fully accessible buildings, they are encouraged to seek the most accessible spaces available. Certain required architectural or structural changes may be the responsibility of the building's owner, not the government. But the owner's failure to make these changes does not absolve the agency, which still has the responsibility to ensure that the programs housed inside the building are accessible.

A government program or agency located in an historic property is not required to take any action that would threaten or destroy the building's historic significance. An historic property is one that is listed, or is eligible for listing, in the National Register of Historic Places or is designated as historic under state law.

While some programs housed in historic buildings may be more constrained in making structural changes, they still must ensure that their services are accessible. In some cases, it may be possible to move a program to an accessible location. If this is not possible, and only one part of the building is inaccessible, then perhaps the disabled person can obtain the services in another office. Staff also could be available to retrieve materials from inaccessible portions of the building.

post signs directing visitors to accessible entrances and facilities

Suppose a government building has several entrances, but only one is accessible to people using wheelchairs. The agency should erect signs at the inaccessible entrances directing disabled individuals to the accessible door. If police or guards are stationed at inaccessible entrances, they should be instructed where to direct someone to an accessible entrance. If particular programs or services inside a building are physically inaccessible, signs or other devices must indicate where accessible

programs are located or where information on accessible locations can be obtained. Similarly, if a bathroom is inaccessible, there should be a sign posted outside directing visitors to the nearest accessible bathroom.

incorporate accessibility features into buildings or facilities undergoing renovation

Generally, the ADA does not require local governments to undertake expensive and burdensome alterations in existing buildings in order to make them accessible. This does not mean, however, that such alterations are never required. If the entire second floor of a building is being renovated, then removal of physical barriers and incorporation of accessible design features in that area is required. Such renovations are similar to erecting a new building and thus warrant ensuring full accessibility in the renovated area. Moreover, if a government agency undergoes renovations, the costs of removing physical barriers and providing physical access is not as expensive.

If only a portion of the second floor is being renovated, then only the renovated portion must be made accessible, not the entire floor. There is one important exception. Public walkways to the renovated portion, and restrooms, telephones and drinking fountains serving the renovated area, also should be made accessible, unless such renovation would entail excessive costs. The effect of making a renovated area accessible will be undermined if the only public walkway to the area remains inaccessible. Restrooms, telephones and drinking fountains are considered important personal comforts, and thus should be made accessible.

These ancillary renovations are not required, however, if they are disproportionate to the overall alterations in terms of cost and scope. Therefore, a local government will have to evaluate each situation individually to determine: what elements fall within the area to be renovated and thus must be made accessible; what elements fall outside the area to be renovated but should still be made accessible; and whether making accessible any or all elements outside the area being renovated far exceeds the scope of the planned renovations or entails disproportionate costs.

Let's use as an example a program which is located in a building with two floors, but no elevator. The second floor will be undergoing renovation. A logical question arises as to why these renovations must include ensuring accessibility to persons with disabilities when lack of an elevator will still make the second floor inaccessible.

First, the ADA's accessibility guidelines do not address only barriers to persons with mobility impairments (e.g., people who use wheelchairs). Accessibility guidelines affect persons with vision or hearing impairments (e.g., installation of different types of alarm systems or lighting systems), as well as a person of short stature. The ADA accessibility guidelines specify the height of counter tops, telephones and water fountains.

Second, the stairs may not pose an insurmountable barrier to persons with mobility impairments. Some individuals may be able to climb the flight of stairs, even with great difficulty, and then use a wheelchair upon reaching the second floor. Just because they man-

aged to reach the second floor does not mean that they must continue to cope with an obstacle course of barriers. The bathrooms, pathways and doorways on the second floor should be accessible.

design new buildings, streets and walkways to be fully accessible

New buildings and facilities must be accessible, and the ADA provides specific instructions on what this means. In essence, accessible design becomes another element of a building code, similar to specifications about the number of emergency exits or the depth of the foundation.

Do not think only in terms of buildings, however. Parks and playgrounds, open-air theaters, parking lots or garages and stadiums are other types of facilities that may be under a local government's jurisdiction and thus must be accessible to persons with disabilities. All newly constructed or altered streets, roads and highways must contain curb ramps at intersections. Similarly, all newly constructed or altered pedestrian walkways must have curb ramps at intersections to streets, roads and highways.

New buildings and facilities constructed after January 26, 1992, must be designed to be accessible to persons with disabilities. (Similarly, the renovated portions of an existing building also must be accessible if work is commenced after January 26, 1992.) At the current time, local governments may choose to follow one of two sets of approved building accessibility guidelines: the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). UFAS will be familiar to many local governments, because these standards are referenced in regulations implementing section 504 of the Rehabilitation Act of 1973.



U.S. Department of Agriculture

Federal and state laws now require that new construction projects meet a number of accessibility standards. The substitution of ramps for steps may not involve any additional cost when these modifications

For the most part, the UFAS and ADAAG standards are similar. However, they differ in one important respect. The ADAAG standard, unlike UFAS, does not require the installation of elevators in buildings with less than three stories or less than 3,000 square feet per story. But ADA specifies that this exception does not apply to local governments. **If a local government constructs a two-story building, it must install an elevator, regardless of which building standard is used. There is no exception to this rule.**

Remember, however, that this applies only to new buildings that are being constructed. The Department of Justice (DOJ) is in the process of developing one uniform set of building guidelines especially for state and local governments. DOJ recognizes the need for one uniform set of guidelines, because UFAS and AGAAG were developed for commercial facilities and thus may not address features found in government buildings. Once the new standards are published, they will be the **only** accessibility guidelines approved for use by state and local governments; UFAS and AGAAG will no longer be acceptable. Government agencies should not panic, however, since the new guidelines are not expected to differ too much from existing ones. Publication of the new standards is expected in 1992.

UFAS and ADAAG constitute minimum accessibility standards. If state or local building standards exceed the requirements of UFAS or ADAAG, then the town must follow the state or local standards. If UFAS or AGAAG exceed state or local standards, then UFAS or ADAAG must be followed. As soon as possible, local governments and their state associations should encourage the adoption of state building codes that meet ADA compliance standards. Localities would then be assured that the ADA standards were satisfied when construction and renovation projects passed final state inspection.

ENFORCEMENT PROVISIONS

The ADA requires that local governments employing 50 or more persons establish grievance procedures to resolve complaints of ADA violations. Governments with less than 50 employees may establish grievance procedures, but they are not required to do so.

An individual with a disability who believes that she, or a specific class of persons with disabilities, has been subjected to discrimination can file a complaint with the Department of Justice within 180 days of the alleged discrimination. **Persons with disabilities do not have to exhaust local government grievance procedures before filing this complaint.** The department either will refer the complaint to the appropriate federal agency for investigation or, if it is the appropriate agency, will investigate the complaint.

If the Justice Department (or the appropriate federal agency) finds that the local government has discriminated against the individual, it will attempt to resolve the problem through voluntary compliance. If no resolution is possible, then the Justice Department will issue a Letter of Finding to the local government and to the person who filed the complaint, explaining its factual findings, legal conclusions and a description of remedies to eliminate the discrimination.

The Justice Department can pursue administrative

remedies. If the local government receives federal funding, these remedies include termination of federal funds until the discrimination is eliminated. The Department of Justice may also choose to sue the local government.

A person who alleges discrimination may also sue the local government, either in conjunction with or instead of filing a complaint with DOJ. Filing a complaint with the Justice Department does not affect the timing of a private lawsuit, which can be filed before the Justice Department (or the appropriate federal agency) finishes its investigation, or even if the investigation finds no evidence of discrimination. A private lawsuit also may be filed even if the Department of Justice chooses to sue.

If a disabled person (or the Justice Department) wins the lawsuit, remedies include an injunction to stop the discriminatory activity or ordering the local government to take affirmative steps (e.g., elimination of physical barriers, installation of auxiliary devices). There is also the possibility that damages may be awarded. In addition, the court may order the local government to pay attorney's fees.

In order to avoid litigation, the ADA encourages the use of alternative means of dispute resolution, especially mediation. See chapter 5 for a discussion of dispute resolution strategies.

chapter 4

local government employment provisions

Beginning January 26, 1992, all town government agencies and programs had to comply with the ADA's employment provisions. Unlike the private sector, all government programs are covered by the ADA's employment provisions, **regardless of the number of employees**. Furthermore, all town governments must comply with ADA employment provisions, regardless of whether they receive federal funding. Thus, even a town government that has only one employee is covered by the ADA's employment provisions.

In addition to protecting all full-time local government employees, the ADA employment provisions also protect part-time employees (those who work 20 or more weeks a year), elected officials (both paid and unpaid) and volunteers (such as fire fighters).

Many of the ADA provisions will be familiar to local government agencies covered by section 504 of the federal Rehabilitation Act of 1973, which prohibits employment discrimination on the basis of disability in programs that receive federal funding, either directly or when passed down through state and county governments. For town governments that never received federal funding, or no longer receive such funding, the ADA's employment prohibitions may be new. (Even if town governments were not covered by section 504, many of them have been subject to state anti-discrimination laws and thus may already be in compliance with some of the ADA's requirements.)

The ADA and section 504 regulations are similar, and many requirements are identical. In fact, the section 504 regulations formed the foundation of the ADA regulations. The ADA regulations, however, expand or elaborate on certain requirements, thereby providing town officials with more guidance. The only significant differ-

ence between the two sets of regulations is their enforcement mechanisms. If a town government complies with the ADA regulations, it will be in compliance with the section 504 regulations. This chapter is based on the ADA regulations, and thus will meet the needs of all town governments.

prohibited discrimination

The ADA broadly bans discrimination in employment, including the following areas:

- recruitment, advertising and job application procedures
- hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, rehiring
- rates of pay or any other form of compensation
- job assignments, job classifications, position descriptions, lines of progression, seniority lists
- leaves of absence, sick leave or other leave
- fringe benefits
- selection and financial support for training
- activities sponsored by the employer, including social and recreational programs

The remainder of this chapter discusses the ADA's impact on: the hiring process; reasonable accommodations and undue hardship; selecting or rejecting applicants with disabilities; working with employees with disabilities; and enforcement of ADA employment provisions. By the end of the chapter, town governments will understand what they must do when they interview,

view, hire and work with persons with disabilities.

Before beginning a review of the ADA employment provisions, we must introduce one critical concept: reasonable accommodations.

reasonable accommodations

Throughout this chapter, we will refer to the need to provide "reasonable accommodations" to applicants or employees with disabilities. "Accommodations" are modifications or adjustments that enable a qualified individual with a disability to apply for a job or perform specific tasks.

Accommodations respond to the functional limitations of persons with disabilities. For example, a ramp may be an accommodation that enables a person who uses a wheelchair to enter a building or office that has steps. A TDD (telecommunication device for the deaf) is an accommodation that enables a person who is deaf to communicate with others by telephone. A flextime working schedule is an accommodation that enables a person with depression to obtain treatment and still fulfill his job responsibilities.

Not all persons with the same disability will need the same type of accommodation(s). Since each person's functional limitations differ, a determination of what accommodation, if any, is needed must be made on an individual basis. A person with a disability may need an accommodation: during the job application process; to move through the work environment (e.g., steps versus a ramp; narrow versus wide doors); to perform her job responsibilities; and to gain the same benefits and privi-

leges available to other employees.

Accommodations may include:

- removing physical barriers in existing facilities so that they are accessible to and usable by persons with disabilities
- job restructuring (reallocating non-essential or marginal job functions)
- part time or modified work schedules
- reassignment of an employee who becomes disabled to a vacant position
- acquisition or modification of equipment or devices
- appropriate adjustment or modification of examinations or training materials (e.g., allowing an applicant with a learning disability an extended period in which to complete a test; providing training materials in braille or on audiotape)
- modifying employment policies
- providing auxiliary aids and services, such as qualified readers or interpreters
- providing personal assistants, such as a page turner or travel attendant
- making non-work areas accessible (e.g., providing a designated parking space near the entrance; widening a door to the lunch room to permit entry to a person who uses a wheelchair)
- permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment

The ADA employment provisions apply only to qualified job applicants or current employees. And they only require employers to provide "reasonable accommodations." This means that certain accommodations are unreasonable and thus are not required. Understanding when an accommodation is reasonable and when it is not will be addressed later in this chapter, in a section entitled "reasonable accommodation and undue hardship."

Most accommodations for employees with disabilities involve little or no expense. After losing his sight, this machine shop employee returned to work and asked only that he be able to bring his leader dog on the job.



Michael Esposito

THE HIRING PROCESS

developing a position description

Government agencies, as employers, cannot discriminate on the basis of disability against a qualified individual; an employer only can determine whether a person with a disability (like any job applicant) is qualified by assessing the individual's ability to perform specific job duties.

Therefore, the first step in the hiring process is determining what job responsibilities need to be performed and what type of applicant is needed to perform them. Although the ADA does not require the use of position descriptions, employers may find it helpful to develop a description for each vacant position, or for new positions as they are created.

A position description should be completed before a job opening is advertised, and it should form the basis for hiring decisions (and reviewing an employee's job performance). A local government could face questions about illegal motives if it interviewed an applicant with a disability and then wrote a position description that disqualified the applicant. A job description offers the applicant a precise understanding of what her responsibilities will be. It is not the position title that is important, but the specific job duties required of someone in the position. Many employers already have such descriptions; they might want to review them to ensure that they incorporate the suggestions listed below.

essential versus marginal functions

Essential functions are the fundamental job duties; marginal functions are the ancillary job responsibilities. The distinction between essential and marginal job functions is critical, because it is a person's ability to fulfill the essential job functions, with or without reasonable accommodation, that determines whether an applicant (or employee) with a disability is qualified for the position.

An employer cannot reject, on the basis of disability, a qualified applicant who cannot perform the marginal job functions. Refusal to further consider an applicant based on disability is permissible only if the applicant cannot perform the essential job functions, with or without reasonable accommodation. The choice of whom to hire, of course, should be from the list of qualified candidates, some of whom may have disabilities.

Essential functions may be the reason a position exists. For example, typing is an essential function of a typist (or secretary). Driving a bus is an essential function of being a bus driver. Speaking on the telephone is an essential function for an employee answering an information telephone line. Essential functions can entail physical skills—the ability to lift 20 pounds or to type—or intellectual skills, such as arithmetic or the ability to develop a town fiscal policy. Employees generally spend a significant percentage of their time working on essential func-

tions. Answering the telephone is an essential function for a receptionist who spends 40 percent of his time on the phone. Handling ledgers and balance sheets is an essential function if it constitutes, say, 70 percent of an employee's work tasks. But speaking on the telephone may be a marginal function for this same employee if it constitutes only 10 percent of her time.

The percentage of time spent performing a function is not always indicative of whether it is essential. A function may be essential because of the consequences of not requiring an employee to perform that function. For example, a fire fighter may not routinely carry an unconscious adult out of a burning building. But failing to require a fire fighter to be able to perform this function would produce serious consequences. Thus, the ability to carry a person from a burning building would be an essential job function for a fire fighter.

A specific job task may be essential because only a limited number of employees can perform this task. Many job tasks in town governments, with their limited work forces, could fall into this category, because very few employees are available. In other words, reassignment of a task would be impossible, or extremely difficult, because there is no one else who can perform this task. If there is one receptionist, for example, and answering the telephone is an essential function, then reassignment of this task is not necessary as an accommodation to an applicant who is hearing-impaired.

Certain job functions are highly specialized, so that a person is hired for her expertise or ability to perform the function. This applies to anyone with a specialized degree, such as law, medicine or certified public accounting. Computer programmer would be another example.

A town government, in determining whether a task is an essential function, should focus on the purpose of the function or the result to be accomplished, rather than the manner in which the function is usually performed. The ability to perform an essential function should be measured by the result, not the method used to achieve the result.

For example, the essential function in a job using a computer is the ability to access, input and retrieve information. A person does not have to retrieve information manually, as is usually done, to accomplish this objective successfully; she can use an adaptive device. Employers should review the work experience of the person presently holding a job, or past incumbents, to determine the essential job functions. The employer's judgments about which functions are essential and which are marginal carry great weight, especially if they are delineated in a position description developed before someone is hired.

An employer does not have to justify why a particular task is essential or marginal. But the categorizing of essential and marginal functions should resemble how past incumbents or current job occupants spend their time, unless the position is undergoing substantial changes. For example, if the current administrative

assistant rarely answers the telephone, and no changes in job duties are planned, an employer may need to explain why the position description lists answering the telephone as an essential function.

If the tasks of a specific position change over time, the position description should be updated—before advertising an opening. A 10-year-old position description that bears little resemblance to today's job duties will have little weight if a discrimination complaint is brought.

advertising the position

Once an employer has completed a job description, the next step in the hiring process is advertising the position's availability. All announcements about the job opening should include a notice that the town government does not discriminate on the basis of disability. The announcement also could note that reasonable accommodations will be provided.

Many employers advertise job openings only in newspapers or other written publications. Town governments should consider other media for announcing the availability of jobs, in order to ensure that persons with vision impairments have an opportunity to learn about an opening.

Alternative media include radio or television announcements and telephone recordings. Another alternative is to send job announcements to disability organizations, asking them to distribute the announcement to their clients or members. This is an effective method of outreach to persons with disabilities and a powerful statement that a town government takes seriously the policy of nondiscrimination.

interviewing the applicant

An employer wants to know if an applicant can fulfill the essential (and marginal) functions of a position, and a job interview is designed to answer this question. The ADA wants to ensure that hiring decisions are based on an objective evaluation of a disabled candidate's skills, qualifications, work and educational experience, not on her disability.

Therefore, an employer cannot ask a job applicant with a disability any questions about the disability. Nor can a town government ask any health-related questions, because they might reveal the existence of a disability. In essence, such questions are irrelevant to the main issue—can the applicant perform the essential and marginal job functions? Job related health qualifications can be assessed in a post-job offer physical, if such examinations are required of all prospective employees.

The ADA recognizes that employers may have concerns (whether legitimate or not) about the ability of persons with obvious disabilities—a speech or hearing impairment, inability to use one's legs, a vision impairment—to perform the job functions. As indicated above, it is acceptable to ask an applicant with a disability to explain or demonstrate how he will accomplish a specific

job function, with or without reasonable accommodation.

Thus, if a person with one arm applies for a typist position, you can ask him to demonstrate his typing abilities. The objective is to move away from a non-disabled person's stereotypes and assumptions about what a person with a disability can or cannot do, and instead recognize that each person with a disability must be evaluated individually. Generally, a person applying for a typing position must take a typing test. A person with a disability must take the same test and meet the same standards.

The ADA recognizes and preserves an employer's right to question applicants about their ability to perform all job functions. Therefore, questions about the need for a reasonable accommodation always should be linked with performance of a specific job function.

An applicant with a disability may need, and thus may request, a reasonable accommodation in order to demonstrate how he will perform a specific job function. The employer must provide a reasonable accommodation if he wants the demonstration. But the employer may decide not to provide the reasonable accommodation for the interviewing process, instead, asking the applicant

Below is a list of questions prohibited by the ADA during a pre-offer interview. For some of these questions, an acceptable alternative is offered. In many cases, the illegal question is prompted by a desire to get information that can be obtained without asking anything about the disability.

prohibited

- How long have you had the disability?
- How can a person using a wheelchair get to work on time?
- How is your health?
- Will you need extra time off because of your disability?
- How can a person using a wheelchair attend meetings scheduled all over town?
- How can a person with a hearing impairment discuss matters over the telephone?
- Do you have a disability or impairment?
- Will you need a reasonable accommodation?
- What caused your disability?
- Do you take medication?
- Have you ever filed for workers' compensation?
- Have you ever been treated for any mental condition?
- Have you ever been hospitalized?
- How many days were you absent from work last year because of illness?
- Have you ever been a drug addict or alcohol abuser?

to describe how he will perform the function with a reasonable accommodation. The employer cannot penalize the applicant if the employer decides not to provide the reasonable accommodation for the demonstration.

An employer should check that the interview site is accessible, including access to the building, floor, office and room where the interview will be conducted. If any of these sites is inaccessible, then the accommodation should be to move the interview to an accessible site. Failure to interview an applicant with a disability because the interview site is inaccessible or the applicant requested a reasonable accommodation is prohibited by the ADA.

Just as the ADA prohibits employers from asking disability or health-related questions during pre-offer interviews, these same questions cannot be asked on job applications. Employers should review their job applications and remove any prohibited questions.

testing applicants

Many job positions require that individuals pass a physical or skills test. Tests take different forms—written or oral, multiple choice or essays. Applicants with dis-

Note the difference between the two questions about "reasonable accommodation." The acceptable alternative ties the need for a reasonable accommodation to performance of a job function. The prohibited question, being open-ended, could place the town government in an awkward position if it needed to defend itself against a charge of disability discrimination.

acceptable

- It is important that you be at work on time. Does that present a problem?
- An essential function of this job is to attend meetings scheduled in different parts of the town. Does that present a problem?
- Telephone communication is part of this job. Please describe to me how you can fulfill this responsibility, with or without reasonable accommodation?
- This job requires you to perform [X] function properly. Please describe or demonstrate how you will perform this function, with or without reasonable accommodation.
- It is essential for this position that we can rely on your presence. Does this present a problem?

abilities can be required to take the same tests and meet the same standards as non-disabled applicants. Employers determine what constitutes a passing score or grade. The ADA prohibits employers, however, from applying stricter grading criteria to an applicant with a disability.

Thus, if an applicant for a typing position must type 60 words per minute, an employer cannot require that a candidate with a disability type 70 words per minute. Employers should provide the grading criteria to applicants so they know how their performance will be measured.

Employers should review all tests to ensure that they do not, intentionally or unintentionally, screen out a person with disabilities, or a class of persons with disabilities, by measuring criteria that do not relate to the essential functions of the job. Problems may arise where a test unintentionally screens out individuals whose disability impairs sensory, manual, physical or speaking skills.

For example, requiring a person who is blind to take a written test is inappropriate, unless the ability to see is essential to the job. Suppose an employer requires all applicants to take a written test, but acknowledges that vision is not essential to the job. Does the employer have to discard the test?

No. The problem lies with the format of the test, and then only for individuals with vision impairments. And that is where the concept of "reasonable accommodation" enters. A person who is blind can request that a written test be offered in an alternative format, such as braille or audiotape. Alternatively, a reader could be provided to give the test to the applicant orally.

The applicant also may need a reasonable accommodation to answer test questions. Perhaps the solution will be an answer sheet in braille, or the reader could mark down the answers indicated by the applicant.

Remember, many standardized employment tests are produced by national companies that are covered by the ADA and thus are required to make tests available in accessible formats. If your government uses such tests, you should contact the companies to see what alternative formats they will supply.

A person with a learning disability may need additional time to complete a written test. Providing the applicant with the additional time is a reasonable accommodation. If speed in completing the test is one of the skills being measured, however, allowing extra time would not be reasonable and need not be provided. If sensory, manual, physical or speaking skills are being measured, then accommodations that prevent or distort such measurements are not regarded as reasonable.

An employer can require that an applicant request reasonable accommodation before the date of the test. All applicants could be informed during an interview that reasonable accommodations will be provided if requested in advance. (Remember, not all disabilities will be obvious, so all applicants should be informed.)

pre-offer medical examinations or inquiries

The ADA prohibits pre-offer medical examinations or inquiries. One of the principles behind the ADA is that employment discrimination results from focusing on the disability (and perceived limitations) rather than on the individual. Thus, the ADA prohibits questions about health or disability during interviews and on applications forms (see page 34 for a list of prohibited questions). Similarly, requiring a medical examination during the application process is deemed inappropriate because of the likelihood that it will change the focus from an applicant's ability to do a job to the disability or impairment.

Physical agility tests are not considered medical examinations, and thus they may be administered at any point during the hiring process. Such tests often are used by law enforcement and other public safety agencies. Drug tests are not considered medical examinations; these tests may be given at any point during the application process.

REASONABLE ACCOMMODATION AND UNDUE HARDSHIP

providing reasonable accommodation to applicants or employees with disabilities

An employee with a disability must be able to perform all the essential functions of the job, with or without reasonable accommodations. The ADA requires that employers provide reasonable accommodations to employees with disabilities who, due to their disabilities, face obstacles in performing the essential job functions. (The use of the qualifier "reasonable" indicates that there are limits on what accommodations must be provided; these limitations will be discussed in the next section.) Failure to provide a reasonable accommodation is discrimination. An employer cannot revoke a job offer (or fire a current employee) because an individual with a disability requests a reasonable accommodation.

The ADA does not require that every employer be an expert on reasonable accommodations. Some accommodations are based on common sense; others may require assistance from experts in the field. Employees with disabilities can be useful sources of information on what type of accommodation they need, where to obtain information on appropriate accommodations and where to purchase accommodations.

An employer should never provide an accommodation without checking first with the employee with the disability. First, the employee may not need or want the particular accommodation. The ADA does not require an employer to accept an accommodation against her wishes. Second, the accommodation may not necessarily meet the employee's functional limitation.

The employer's obligation to provide reasonable accommodation only extends to an applicant or employee with a disability. A town government is not required to provide reasonable accommodation to an employee who has a relationship with an individual with a disability.

As discussed in chapter 1, the ADA prohibits employment discrimination against someone on the basis of his relationship with a disabled person. Thus, a town government cannot refuse to hire an applicant with a disabled spouse or child because of fears of higher health insurance costs. But the ADA does not require that a town government provide flexible work hours to employees to make an exception for a non-disabled employee who needs to care for a spouse or child with a disability.

Employers are required to provide reasonable accommodations when the job applicant or employee makes it known that he needs an accommodation. An employer is not expected to be a mind reader; if the applicant or employee does not tell you that he needs an accommodation, then an employer is under no obligation to provide one. If the need for a reasonable accommodation is not obvious, an employer may request documentation of the need. This situation may arise for "hidden disabilities" such as cancer or epilepsy.

No definitive list can be developed that states all possible accommodations for persons with disabilities. The need for a reasonable accommodation varies from individual to individual and will be affected by the type of impairment, the degree of impairment, the work environment, the essential functions of the job and the individual's needs.

An employer should not waste her time (or money) on something that is not needed.

Employers often assume that providing reasonable accommodations means purchasing expensive equipment or making costly architectural changes. In some cases this may be true. But accommodations take many forms, many involving no financial cost but entailing a change in policy or procedures. (Refer to page 32 for a list of types of accommodations.) A person with quadriplegia may need flexible work hours, working from 10-6 instead of 9-5. A person with narcolepsy may need to take periodic breaks throughout the day. A person with a hearing impairment may need to have someone else answer the phone (a marginal job function) and, in exchange, assume a marginal job function for someone else. A person with a mental illness may need a job coach during the first few weeks to help him adjust to his new position and learn job tasks. These are all examples of reasonable accommodations that entail little or no costs. And the possibilities are endless.

Some accommodations involve changes to the general work environment. For example, a blind employee may ask that some furniture be rearranged to permit easy access throughout the office. A bathroom may need alterations for an employee who uses a wheelchair. The same employee may need a ramp to enter the building.

It should be noted that these types of accommodations, which involve accessibility, may be required to meet the ADA's mandates for local government programs and services, as discussed in chapter 3. Therefore, providing a reasonable accommodation to an employee may also fulfill an obligation to provide public access to these government programs and services. Alternatively, the town government already may have provided the reasonable accommodation needed by some employees with disabilities by making structural changes or providing auxiliary aids and services.

Employers may provide, but are not required to provide, a person to assist a disabled employee with personal hygiene or eating as a reasonable accommodation.

reasonable costs

While some accommodations must be purchased, many are relatively inexpensive. For example, a person with a hearing impairment may need a TDD (telecommunication device for the deaf), which costs \$200 to \$400.

The Job Accommodation Network (JAN) offers free assistance to employers about the types of accommodations a person with a disability needs (see appendix b). JAN's data reveal that 30% of the accommodations they suggest cost no money, and another 20% cost less than \$50. Over two-thirds of all suggested accommodations cost less than \$500. Only 11% of suggested accommodations cost between \$1,000 and \$5,000, and these often involve equipment or architectural changes.

The following are examples of accommodations and their approximate costs, as provided by JAN:

- renting a headset phone to allow an employee with cerebral palsy to write while talking (\$6/month)
- supplying a telephone amplifier for a computer programmer who has a hearing impairment (\$56)
- enlarging toilet facilities and installing a hand rail for employees who use wheelchairs (\$500)
- purchasing a pressure-sensitive floor mat that signals to a blind receptionist that someone has entered the office (\$50)
- purchasing a padded wrist-rest to place under a computer keyboard to alleviate the pain of a typist who has Carpal Tunnel Syndrome (\$10)

Town governments may worry about where they can purchase accommodations or locate the specialized companies that serve the needs of people with disabilities. Again, JAN can often provide names and addresses of companies that sell the accommodations they recommend. Alternatively, state or local disability organizations generally can provide such information. In many instances, accommodations can be purchased at the local hardware or office supply store.

Suppose that a person who uses a wheelchair needs a higher desk in order to wheel the chair up to the edge.



"Reasonable accommodations" which will enable an employee with a disability to work often involve common sense and little or no expense. Simply lowering the table on which the incoming mail files were placed allowed this clerk to fulfill an essential function of her job, without purchasing any additional equipment.

One solution is to purchase a desk with taller legs. But a reasonable accommodation also is purchasing blocks that fit under the legs. (These cost less than \$50.) Both accommodations accomplish the same purpose, but one is less costly. If two accommodations accomplish the same purpose—allowing a person with a disability to perform the essential functions of her job—but one accommodation is less costly, the town government may choose to provide the cheaper alternative. A town government certainly can purchase another desk, but the blocks are an acceptable alternative.

What if the employee wants a new desk and not the blocks? Employers should consult with the employee and, if possible, give preference to the employee's choice of a reasonable accommodation. If two or more accommodations accomplish the same objective, the employer can choose the less costly or difficult one.

Reassignment is a possible reasonable accommodation for current employees, but not for job applicants. An applicant who cannot perform the essential functions of a town manager (with or without reasonable accommodation) cannot request reconsideration, instead, for the position of budget director.

Reassignment should be considered only if no other reasonable accommodation is possible. Moreover, an

employee does not have to be bumped from his/her position to permit reassignment of an employee with a disability. Nor does the town have to create a position. Finally, reassignment does not mean a promotion, but rather moving an employee to a comparable position in which the employee can perform the essential job functions with or without reasonable accommodation.

employers do not have to provide any accommodation that is an undue hardship

While the ADA requires that an employer provide "reasonable accommodations" that enable a person with a disability to perform the essential functions of the job, employers may refuse to provide a specific accommodation if it imposes an undue hardship on the employer. **An accommodation causes an undue hardship when it entails a significant expenditure, substantial difficulty or disruption of operations or would fundamentally alter the position.**

The ADA does not establish fiscal criteria for what constitutes undue hardship, because of the broad range of possible accommodations and varying capacity to meet them. An accommodation that costs \$1,000 may be an undue hardship for a small town government, but not for the city governments of Chicago or Los Angeles. Each accommodation must be assessed on an individual basis. For this reason, it is often difficult for local governments to know when a claim of undue hardship is justified.

The size of the municipal government and its budget are among the factors that will determine whether an accommodation is reasonable or an undue hardship. Other factors include:

- the actual cost of the accommodation to the local government, after accounting for outside funding that may cover some or all of the expense (state rehabilitation funds, veterans benefits, etc.)
- overall financial resources of the program or agency involved; the number of persons employed at the program or agency; and the effect of providing a specific accommodation on expenses and resources
- overall financial resources of the town government; overall size of the town government with respect to the number of employees; and the number, type and location of its programs and agencies
- type of operation or operations of the government program or agency
- impact of the accommodation upon the agency or program's operation

The fact that a specific accommodation costs some amount of money, or entails some change in policies, procedures or practices, does not, in itself, create an undue hardship and exempt a town government from providing that accommodation. Rather, a town government must assess the accommodation against the factors

listed above to determine whether the cost of a specific accommodation is so high that it cannot be absorbed into the town's budget.

For example, a township supervisor determines that a disabled employee's request for a \$1,000 computer is beyond the reach of the township budget. But an employer cannot justify failure to hire an employee with a disability just because this one possible accommodation is too expensive.

As an alternative, the employer could spend \$600 on a computer as a reasonable accommodation. If the employee chooses to pay the remaining \$400, then the \$1,000 computer is no longer an undue hardship. The ADA gives employees the option to pay for an accommodation (or that portion of the accommodation) that otherwise is an undue financial hardship.

Employers, however, cannot shift the costs of accommodations to the applicant/employee by refusing to spend any money on an accommodation or requiring that the individual assume the full cost of the accommodation if he wants the job. Similarly, a town government cannot shift the cost of an accommodation to the employee by choosing an arbitrarily low amount as the limit on its expenditures for an accommodation.

An undue hardship may also result if a specific accommodation drastically alters or disrupts the agency's procedures or practices. For example, a receptionist has multiple sclerosis, which requires that the thermostat be set at a very high level. The work site is an office where three other persons work and where constituents come for services, so raising the thermostat will cause great discomfort to other persons in the office. It is not possible to place the receptionist in her own office, because she must be out front to greet people. The supervisor investigates other possible accommodations but learns that raising the thermostat is the only possible solution. Does the employer need to raise the thermostat?

No. Raising the thermostat will cause an undue hardship to other employees and persons in the office, and therefore the town government may choose not to hire her. If this individual had applied for a job where she could work in her own office, then raising the thermostat level would not cause an undue hardship. While raising a thermostat costs relatively little money, under certain circumstances it can cause an undue hardship.

For some jobs, working at home also may be an option, because making structural changes may be an undue hardship. But because this option involves segregation of the employee, it should be offered only as a last resort; and a town government should be sure that no other alternative is feasible.

Arguing that a structural change is an undue hardship will be more difficult if this alteration also is required as part of providing access to government services and programs. Since one structural alteration serves two purposes under the ADA, a town government will have difficulty claiming undue hardship.

As another example, a recently disabled employee returns to work and requests a transfer to another position as a reasonable accommodation. Such a transfer, however, would violate the seniority provisions in a collective bargaining agreement with the union. Violation of a collective bargaining agreement may be an undue hardship. Town governments should review such agreements and explore possible amendments to allow themselves flexibility in providing reasonable accommodations.

Such amendments, or future collective bargaining agreements, should include a clause granting the local government the right to take all actions required by the ADA. (The collective bargaining agreement could also note that unions are covered by the ADA.)

The ADA prohibits a town government from using a collective bargaining agreement to evade its ADA responsibilities. For example, a collective bargaining agreement cannot state that all job applicants must take a medical examination as part of the hiring process, or that employees with disabilities are not entitled to a reasonable accommodation costing more than \$50.

Employers and local governments alike are discovering that persons with disabilities are qualified for a wide range of jobs when the essential functions to be carried out are identified in a job description. Trace Industries in Hopkinsville, Ky., has added a number of employees with disabilities to the staff of its community recycling center.

SELECTING OR REJECTING APPLICANTS WITH DISABILITIES

Employee morale, or the attitudes of others, cannot justify a refusal to hire a person with a disability. For example, a person with a facial scar applies for a position. After the interview, other employees approach the supervisor to express their discomfort. Although the individual met all selection criteria, and thus was a qualified candidate, the supervisor decided not to hire the person because of the feelings of other employees. Is this discrimination?

Yes. The attitudes of other employees, or of citizens who will be served by the individual with the facial scar, do not justify failure to hire this applicant. This situation illustrates one of the primary purposes behind the ADA—to prohibit the fears or feelings of non-disabled people from interfering with the rights of persons with disabilities. Suppose that instead of failing to hire this

individual, the supervisor required that this person work by himself in an office and have limited contact with other employees and no contact with constituents. Are these conditions acceptable?

No, because they still cater to the fears and feelings of the non-disabled. The supervisor is imposing conditions that would not be imposed on other occupants of this position, and that constitutes discrimination.

exclusionary criteria

In addition to educational or experiential requirements and tests, employers may have other selection



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criteria related to sensory, physical (e.g., walking, lifting) or mental abilities. The ADA allows all of these types of requirements. However, a town government may reject an applicant because of disability only if the exclusionary criteria relate to the essential functions of the specific job for which the applicant is being considered and no reasonable accommodation is possible.

job descriptions

If town governments use position descriptions, they should focus on specific job responsibilities, rather than focusing on sensory, mental or physical abilities. For example, an employer should not list vision as an essential function for the position of a bus driver, but instead should require that an applicant have a valid driver's license and be able to drive a bus. Although these requirements will screen out persons with certain disabilities (e.g., blindness), they relate to the essential function of being a bus driver, and no reasonable accommodation exists for an applicant who is blind. Similarly, a high score on a mental aptitude test is not an essential function for the town attorney or comptroller. Instead, the position description should list specific tasks, duties and professional qualifications.

Many jobs appear to require the ability to stand for great periods of time. This criterion could eliminate persons with many types of disabilities, including those who use wheelchairs, persons with a missing (or artificial) leg, persons with muscular diseases and persons with back problems. But requiring an employee to stand violates the ADA if the essential functions can be accomplished while seated (a reasonable accommodation).

safety of others

A disabled person is not qualified if he poses a direct threat to the health or safety of others which cannot be eliminated or sufficiently reduced with a reasonable accommodation. An employee reveals to his supervisor that he has the Human Immunodeficiency Virus (HIV), the virus that causes AIDS. The supervisor, concerned that the employee could transmit the virus to co-workers, fires him. Is this justifiable under the ADA?

No, because the employee poses no threat of transmitting the virus to anyone else. People can have irrational fears about lots of disabilities. There are fears that certain disabilities or illnesses are contagious through casual contact. People may mistakenly believe that some diseases or illnesses are contagious (cancer used to be in this category) or may exaggerate the risk of transmission. Unfortunately, many people fear that anyone with a mental illness is dangerous. The same fear often arises concerning mental retardation or Down syndrome.

The ADA prohibits an employer from making employment decisions based on irrational or unsubstantiated concerns that a person with a disability poses a danger to others. An employer can refuse to hire, or can otherwise treat differently, an applicant or employee based on the probability of harm only if the applicant or employee poses a significant risk of substantial harm to the health or safety of others and the threat cannot be eliminated or reduced sufficiently by reasonable accommodation.

Note that this standard requires more than a showing that harm is possible; there must be a high probability of harm. Four factors must be considered in making a determination that an individual with a disability poses a significant risk of substantial harm to others:

- the duration of the risk
- the nature and severity of the potential harm
- the likelihood that the potential harm will occur
- the imminence of the potential harm

Many employers reading these factors will say that they are not doctors or public health experts, so how can they make these determinations? But that is precisely the point. Determining that an individual poses a direct threat requires an assessment based on current, objective medical or public health information, not on fears or perceptions of harm.

An employer can contact the state or county public health department to obtain information and seek guidance. Other excellent resources may be the state voca-

tional rehabilitation department, especially for concerns involving persons with physical disabilities, and disability organizations. The decision must be made by the employer, but with reference to reputable sources of medical, vocational or public health information.

Very few instances should meet the high level of probable harm required. In fact, most of the employment opportunities found in town governments will not meet this standard. As with most other employment determinations involving persons with disabilities, an assessment of direct threat must be made on an individual basis. Blanket rules rarely will be permissible, such as "Persons with [X] disability cannot be hired for this position because they pose a direct threat of harm to others." Each position and applicant/employee will be different, necessitating an individual assessment.

If an assessment results in a determination that an applicant/employee with a disability poses a direct threat of harm, the employer must consider whether a reasonable accommodation will eliminate the risk or reduce it to an acceptable level. Again, departments of public health or vocational rehabilitation, as well as disability organizations and the Job Accommodation Network, are sources of information.

The ADA overrides state or local public health or safety laws that conflict with ADA requirements. Town governments should be suspicious of any state or local law that contains a blanket exclusion of persons with disabilities. Often, these types of laws have been on the books for years, and no one has bothered to revise or delete them. If you are in doubt as to whether a state or local law is in conflict with the ADA, check with the Department of Justice which enforces the ADA regulations applicable to town governments (see appendix a).

The ADA does not pre-empt federal health and safety laws. If a federal public health law is in conflict with the ADA, a town government should comply with the public health law. In complying with other federal laws, however, a town government still has an obligation under the ADA to consider whether there is a reasonable accommodation, consistent with other federal laws, that will prevent exclusion or different treatment of qualified individuals with disabilities.

safety of employee

What happens if an employer has concerns that an applicant/employee with a disability could pose a danger to himself? The problem with this type of situation is that the employer, whether she intends to or not, acts paternalistically by treating the disabled person as though he were a child who does not know what is best for him. People with disabilities do not appreciate when a non-disabled person advises them on what jobs are safe. A non-disabled person may view certain tasks as potentially dangerous for a person with a disability, but that usually is because they have no experience with having a disability. Most people, regardless of whether they

have a disability, know their limitations.

Town governments should tread carefully before making any employment decision based on concerns that a person with a disability poses a danger to himself. The town government must follow the same steps used for assessing risk to others—does the individual pose a significant risk of substantial harm to self and, if yes, can this risk be eliminated or sufficiently reduced with a reasonable accommodation?

Employers also should use the same sources of information for making these determinations.

The ADA does not require that you give preferential treatment to applicants with disabilities, but it does prohibit employment decisions based on stereotypes, fears or assumptions about disabilities.

Say the town manager has narrowed down the applicants for a job to two candidates, one with a disability and one with no disabilities. Both candidates are equally qualified for the job. Does the ADA require that the town manager hire the candidate with the disability?

No. The ADA does not require that a town government give preferential treatment to an applicant or employee with a disability. But the ADA does not permit a town government to penalize an applicant or employee with a disability by holding his disability against him. Choosing the non-disabled candidate does not violate the ADA, unless the town manager's decision was based on assumptions, beliefs or fears related to the person's disability. Thus, it would be discriminatory to reject a qualified applicant with a disability for the following reasons:

- assumptions that a person's productivity will not meet acceptable levels because of the disability
- concerns about safety (e.g., how would an employee with paraplegia or a vision impairment be able to evacuate a building quickly during an emergency)
- fears that the town government's insurance or workers' compensation costs will rise
- belief that a disabled employee will have higher absenteeism, or that the person's health will deteriorate over time
- fear of increased liability related to the employee with a disability
- the necessity of providing a reasonable accommodation, or the fact that the accommodation will cost money
- concerns that co-workers or the public will not accept an employee with a disability

An applicant with a disability may meet all job requirements and be able to perform the essential functions of the job, with or without reasonable accommodation. Nevertheless, a town government may decide to reject this applicant.

The town government's position will be greatly strengthened if it has taken the following steps:

- developed position descriptions before advertising a position
- distinguished between essential and marginal tasks on the position description
- eliminated illegal questions from applications and refrained from asking similar questions during interviews
- eliminated pre-offer medical examinations
- provided reasonable accommodations, if necessary, during the application process
- reviewed exclusionary criteria and determined that they relate to the essential functions of the specific job in question and that no reasonable accommodation is possible

determining whether or not to hire a person with a disability

The ADA only protects persons with disabilities from employment discrimination if they are qualified for the position. In evaluating a job applicant with a disability, an employer should engage in a two-step process to determine whether the applicant is qualified for the job:

- Does the individual satisfy the skill, experience, education and job-related requirements of the position?
- Can the individual perform the essential functions of the job, with or without reasonable accommodations?

Generally, the first question ignores the person's disability and examines whether the applicant meets the objective criteria by which all applicants for the position, regardless of whether they have a disability, will be judged. The ADA permits selection criteria such as good judgment and ability to work with other people.

The employer should document what steps were taken to investigate possible accommodations and why all accommodations constituted an undue hardship. The critical point is not the decision reached by the employer, but the steps taken to reach that decision. An employer who asks illegal questions or who determines that an accommodation is an undue hardship without conducting any type of inquiry will be on weak ground.

post-offer medical examination and inquiry

After a job offer is extended, an employer can make medical inquiries or require the new employee to take a medical examination, provided that all persons selected for the particular position, regardless of whether they have a disability, must undergo a medical examination or answer medical questions. An employer cannot single out persons with disabilities for post-offer medical examinations or questions.

If a town government extends an offer of employment to a teacher who uses a wheelchair, the teacher cannot be asked to take a medical examination, unless all new teachers must undergo a medical examination.

The job offer cannot be made contingent on the results of the medical examination or the answers to questions about one's health, unless all new employees are subject to this contingency.

If the criteria used to evaluate the results of medical examinations or inquiries screen out or tend to screen out persons with disabilities, they must be related to the essential functions of the job. For example, suppose a medical examination reveals that a person has a back problem that prevents her from lifting more than 15 pounds. An employer cannot withdraw a job offer for an administrative position in which lifting more than 15 pounds is not an essential function of the job, only a marginal function. In this case, there may be someone else who could perform this particular task. The person with the disability might trade marginal job functions with another employee—Gina will do the heavy lifting, and Laura, who has the back problem, will take one of Gina's marginal job functions.

If lifting is an essential function of the job, can the employer withdraw the job offer? Not necessarily, because there may be a reasonable accommodation that allows the individual to do such lifting. The job offer may be withdrawn, based on the back problem, only if there is no reasonable accommodation which permits the individual to perform heavy lifting.

All information obtained from medical examinations and inquiries must be treated as a confidential medical record, with certain limited exceptions. Medical and disability-related information may be disclosed to:

- supervisors and managers who need to know about necessary restrictions on job duties and other reasonable accommodations
- first aid and safety personnel, if the disability might require emergency treatment or if any specific procedures are needed in the case of fire or other evacuation
- government officials investigating compliance with the ADA, other anti-discrimination laws or other federal laws
- state workers' compensation offices or second injury funds, in accordance with state laws
- insurance companies, if they require medical information in order to provide health or life insurance to employees

working with employees with disabilities

Employees with disabilities may request a reasonable accommodation at any time. People with disabilities are not required to disclose their disabilities during the hiring process, or even after a job offer is extended. Nor must they request a reasonable accommodation during this period. Some persons may never reveal their disabilities, because there is no need to do so. Some employees may reveal their disability once they have started working, because only then do they realize they

need a reasonable accommodation. Or a non-disabled employee may become disabled and thus need to request a reasonable accommodation.

The approach for assessing what accommodations are available, and whether a specific accommodation constitutes an undue hardship, is the same as discussed in preceding sections. Remember, employees with disabilities are entitled to reasonable accommodations to enable them to participate in programs or benefits available to other employees. For example, an employee who is blind may request that written materials describing the health insurance plan be supplied in an alternative format, such as braille or large print. (Town governments should check with their insurance carriers about making written materials available in alternative formats.) If the town government hosts a luncheon for all employees, the luncheon must be held at an accessible location if one of the employees uses a wheelchair. An employee with a disability also may need a reasonable accommodation to attend and benefit from a training session offered to all other employees.

Employees with disabilities are entitled to the same benefits as other employees. A town government cannot discriminate against employees with disabilities in terms of benefits provided to all employees (e.g., medical insurance, vacation, administrative leave). Regarding insurance coverage, if a town government offers no insurance coverage to any employee, the town government does not have to offer insurance coverage to an employee with a disability. But a town government that offers insurance to all employees cannot exclude coverage for an employee with a disability.

A town government, however, may have an insurance plan that excludes coverage for a pre-existing condition. There is no ADA violation merely because such restrictions could have a greater impact on an employee with a disability. Insurance plans also can impose limits on reimbursement for different types of medical care. For example, there is no discrimination if the town government's insurance plan limits coverage for treatment of a mental illness or limits the number of blood transfusions that will be covered, as long as these types of restrictions apply to all employees. On the other hand, a local government cannot make decisions when choosing an insurance plan expressly for the purpose of discriminating against a person with a disability.

disciplinary action

Employees with disabilities are subject to the same disciplinary action as non-disabled employees. There is no ADA violation merely because such restrictions could have a greater impact on an employee with a disability.

The ADA does not protect an employee who comes to work under the influence of alcohol and, as a result, performs below acceptable norms. Note that the issue is

not the employee's disability, but job performance. An employer determines acceptable levels of performance, and if an employee falls below those levels, regardless of whether the reason is carelessness or alcohol intoxication, the employer can take appropriate action. **An employee with a disability can be held to the same performance standards as everyone else.**

Many town governments have a policy on employees who miss work without notifying their supervisor. After one such absence, there is a warning. A second absence brings a reprimand, and a third absence is grounds for dismissal. If an employee with a mental illness has one unexcused absence, the employer cannot fire her.

An employer cannot single out an employee with a disability for particularly harsh punishment, based solely on fact that the person has a disability. In this example, if a non-disabled employee who had one unexcused absence would receive a warning, the employee with a mental illness cannot be fired for the same infraction. **Employees with disabilities cannot be held to a higher standard than non-disabled employees.**

medical examinations and inquiries: incumbent employees

A town government can require an incumbent employee to undergo a medical examination, or answer medical questions, only if the examination or questions relate to the employee's safe performance of the essential functions of his job. A town government cannot single out an employee with a disability for questions or for an examination. Thus, a town government cannot require an employee to undergo a medical examination or answer questions because his hair suddenly falls out. But a town government could require a medical examination of an employee who falls asleep at his job.

A town government may require periodic medical examinations to determine whether employees in physically demanding jobs continue to be fit for duty, as long as the scope of the examination relates to the essential functions of the job. For example, requiring employees in administrative positions to undergo a yearly back examination is not permissible, because it does not relate to the essential functions of the job.

chapter 5

resolving disputes alternatively

Mediation is an alternative dispute resolution strategy which parties involved in a dispute involving the Americans with Disabilities Act (ADA) may use to resolve their dispute outside of the court system. Local leaders should learn why mediation is being widely used, how it works and how to find a qualified mediator in their area.

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out how the nominal winner is often a real loser—in fees, expenses and waste of time."

ABRAHAM LINCOLN
AS QUOTED BY THE AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON DISPUTE RESOLUTION

The Americans with Disabilities Act encourages the use of alternative dispute resolution. John Wodatch, director of the Office on ADA in the Department of Justice, has said that alternative dispute resolution is fitting for disability discrimination disputes because actions generally stem from a history of ignorance, rather than a history of animosity. The ADA encourages both parties in a dispute involving access to government services or employment to explore resolution alternatives before turning to the courts.

Alternative dispute resolution refers to a broad range of mechanisms designed to assist parties in resolving differences. It is effective in resolving matters that never get to court, as well as offering a means of settling 90 to 95 percent of the cases that are filed in court.

As our litigious society increasingly burdens the judicial system with lengthy and costly law suits, alternative dispute resolution strategies are gaining popularity. Given a choice between negotiating a compromise and

getting reinstated in a job, or risking countless months and untold expense while awaiting a judge's decision, the person who alleges employment discrimination may choose the former remedy.

Dispute resolution mechanisms range from the most informal (negotiation, where disputants simply confer so as to reach an agreement) to the most formal (arbitration, where a third party conducts a formal hearing using specific procedures); they also include ombudsman arrangements (citizens appointed by government to weigh other citizens' complaints objectively). Mediation, an informal mechanism, is probably the most useful strategy for resolving ADA disputes over access to services or employment.

what is mediation?

Mediation is a private, voluntary process in which an impartial person—the mediator—convenes the parties (or their advocates) to work together toward a mutually acceptable agreement. In simple terms, mediation is a structured way for people to talk and listen to each other, with help from a trained facilitator. Unlike a judge, the mediator is not empowered to render a decision.

There are currently over 350 community-based mediation and other dispute resolution projects throughout the country, according to the American Bar Association Standing Committee on Dispute Resolution. While approximately 2,000 people were trained as community mediators in 1977, there are some 21,000 trained today. Mediators routinely resolve consumer, neighborhood, landlord-tenant, family, environmental, employment, education and probate disputes, as well as disputes concerning minor criminal activities.

Mediation cases are conducted by trained, certified

professionals or, in some regions, by specially trained community volunteers. Most mediators are not attorneys. However, in disputes involving major imbalances of power, attorneys may get involved in mediation.

This is how mediation works. The disputing parties sit down and listen to the mediator explain the process. The exercise begins as the mediator asks the first party to tell her story without interruption. Next, the second party tells her story without interruption, followed by any additional parties. Then the mediator engages the parties in a dialogue about the broadest possible range of solutions to the dispute. Unlike a judge who issues a verdict, this third-party facilitator actually helps the parties work out the details of a mutually agreeable decision.

Some mediation decisions are put in writing to be accepted as binding by both parties. Such an agreement, however, does not preclude any of the parties from going to court later on.

where to find a qualified mediator?

Disputes over ADA issues are best handled by a person who has three qualifications:

- considerable training and experience in mediation
- knowledge of ADA and other relevant anti-discrimination laws
- understanding and familiarity with the broad range of program modifications or reasonable accommodations that make programs, services or employment accessible, without imposing an undue burden on the local government

At the present time, most small communities will need to reach outside of their areas to locate a qualified ADA mediator. Here are a few suggestions:

- Check the business listings in area telephone directories under mediation, mediation services, arbitrators or dispute resolution. Look for employment mediators and skip the listings for divorce and family mediators, who are not likely to be familiar with ADA issues.
- Call the county court house, consumer affairs office or Better Business Bureau and inquire about

qualified mediators.

- Contact state disability experts and organizations for referrals to qualified mediators. For example, each state has a protection and advocacy (P&A) system, which advocates for the rights of individuals with developmental disabilities. Many of the P&As are undergoing training in mediation. To locate the P&A agency in your state, call the governor's office. (The governor designates the P&A, which can have any number of titles.)
- Other possible sources of referrals are centers for independent living and vocational rehabilitation agencies.
- Consult with national organizations (listed below) that maintain directories of trained mediators. Ask if they know of any mediators who are qualified to handle ADA disputes.

American Bar Association
Standing Committee on Dispute Resolution
1800 M Street, N.W.
Suite 200-S
Washington, DC 20036
(202) 331-2258

National Institute for Dispute Resolution
1901 L Street, N.W.
Suite 600
Washington, DC 20036
(202) 466-4764 (Voice/TDD)

Council of Better Business Bureaus, Inc.
4200 Wilson Boulevard
Suite 800
Arlington, VA 22203
(703) 276-0100 (Voice/TDD)

Society of Professionals in Dispute Resolution
1730 Rhode Island Avenue, N.W.
Suite 909
Washington, DC 20036
(202) 833-2188

chapter 6



National Center for Access Unlimited

Many smaller local governments may not have paid much attention to the accessibility of their services and facilities since the termination of General Revenue Sharing (GRS) in 1986. In many cases, the new federal ADA standards duplicate those found in the Section 504 requirements which all GRS recipients had to meet. A local government self-evaluation remains the key to effective compliance.

self-evaluation

what is self-evaluation?

A song from the 1960s asked the listener to "Walk a Mile in My Shoes." In the last 25 years, many of the barriers from those times have fallen because of changes in attitudes and laws. Now, the Americans with Disabilities Act (ADA) identifies another set of barriers that must be removed.

The self-evaluation required under ADA asks local government officials to take another kind of walk—a walk through your town's public services, facilities and employment practices from the perspective of residents who may travel by wheelchair, walk with a leader dog or be unable to read because of a learning disability.

Self-evaluation involves self-education. Representatives of the disability community can provide perspectives that might otherwise go unnoticed. For example, the independent senior citizen with arthritis finds the smooth, round handle on the town hall door to be a barrier for which "help" must be requested. She suggests replacing it with an inexpensive handle that can be opened with a closed fist and will also meet the needs of the young mother with cerebral palsy and the war veteran with mechanical hands.

Many local governments are familiar with the self-evaluation process because of the Section 504 requirements which applied to all recipients of General Revenue Sharing (GRS) funds and continue to apply to all localities receiving other federal funding. The new ADA regulations note that the requirements themselves will "apply only to those policies and practices that were not included in the previous [504] self-evaluation."

But most localities should review all areas for compliance, even those previously evaluated. The information

gathered to satisfy Section 504 may be six to 12 years old, and many small towns and townships stopped receiving GRS funds before the Section 504 deadline for making structural changes occurred. Certainly, the self-evaluation experience under GRS will serve you well in dealing with the ADA requirements; but all the information on services, employment and facilities should be made current and kept up-to-date.

Within ADA itself, employment practices and government services, respectively, are treated in Title I (Equal Employment Opportunity for Individuals with Disabilities) and Title II (Non-discrimination on the Basis of Disability in State and Local Services). These two sets of requirements have been discussed at length in chapters 3 and 4, respectively. But unlike businesses, local governments, regardless of size, have had to comply with the ADA, beginning January 26, 1992. Localities have a year from this date to complete their self-evaluation.

January 26, 1993, however, should not be viewed as the date through which local governments are protected against claims of non-compliance. Department of Justice commentary on Title II makes clear that, "the one-year period for compliance with the self-evaluation requirement....does not stay the effective date of the statute....Public entities are, therefore, not shielded from discrimination claims during that time." However, a local government that can show that good faith efforts are underway to identify and rectify any problems will probably avoid major administrative investigations or lawsuits and should be subject to less severe penalties if any violations are found.

When problems are identified, compliance should be achieved as soon as possible. What follows, then, are suggestions as to how a self-evaluation can be done in

accordance with the law, reasonably and efficiently.

a three-stage process

The self-evaluation process suggested below has three parts: 1) a local government looks at its programs and policies to see if they are excluding persons with disabilities from employment with the government or from the benefits of governmental services (this review is done locally); 2) once the programs and policies have been reviewed, the local government identifies steps to remedy situations which might be excluding persons with disabilities (or make participation difficult); 3) the locality sets its timetable for phasing in changes to programs and policies which have a negative impact on serving or employing citizens with disabilities (this is called the "transition plan").

Once the first phase is completed, the local government knows the obstacles to full participation by disabled persons in its programs and activities. Remedies generally will involve: non-structural changes such as provision of auxiliary aids and services, revision or elimination of specific policies and practices and, when necessary or required, structural or architectural changes, provision of auxiliary aids and services and revision or elimination of specific policies and practices.

As noted above, program and policy changes should be made as soon as possible, since ADA is already in effect. Local governments had to be in compliance with most of the ADA regulations by January 26, 1992. Structural changes required by the ADA should be completed no later than January 26, 1995.

Later in this chapter, there are work sheets which provide step-by-step ideas for conducting the self-evaluation of employment, government programs and contractual relationships; identifying non-structural options for accessibility by disabled persons to government programs; and phasing in structural modifications.

involving individuals with disabilities

The ADA regulations state that a locality must consult persons with disabilities and/or representative organizations at each stage of the self-evaluation (review of programs and activities; identifying remedies; scheduling corrective measures). But the regulations do not stipulate how many people to consult, how to select the members, whether there should be a group or individual consultation or how long the consultation process should take. All of this is up to the local officials.

A local government may wish to develop its self-evaluation strategy by establishing a group which includes a wide variety of members representing the local disability community, for a number of reasons.

First, a broadly representative group will help to ensure the most complete evaluation of programs and policies and to uncover any impediments to participation by persons with disabilities. Second, persons or experts from organizations representing disabled individuals

will be in an excellent position to recommend the least costly, most innovative solutions to accessibility problems, because they have to face obstacles every day and know how small changes can make big differences. Third, involvement of persons with disabilities in the self-evaluation will demonstrate the locality's commitment to the goals of ADA and help win support among all citizens for the town's handling of compliance with the legislation.

Here are some suggestions for locating people who can help with self-evaluation:

- appoint at least one local official to be part of the self-evaluation
- draw upon local agencies or chapters of disability rights organizations, if possible; many disability groups, like Easter Seals, have county chapters
- check with local veterans' groups
- include individuals with ties to the disability community, perhaps a citizen with a disabled child
- keep in mind the types of disabilities (mobility, vision, hearing, developmental, mental, drug/alcohol abuse, invisible disabilities such as heart or psychological problems, etc.)
- ask the help of the local school system (see the next section)
- publicize widely in appropriate media accessible to persons with disabilities
- review the list of resources which appears later in this workbook.

schools—a valuable local resource

Although all governments are required to comply with ADA, local public schools, colleges and universities have had long experience—since the mid-1970s—with similar compliance issues under Section 504. At that time, the first federal agency to issue Section 504 regulations was the former Department of Health, Education and Welfare (HEW), now divided into the Department of Health and Human Services (HHS) and the Department of Education.

Ask if the school system's disability coordinator would have the time to participate in your ADA advisory group, or at least to offer advice on how to organize the group and avoid problems experienced by the school district when it did its self-evaluation.

In addition to offering assistance in coordinating the self-evaluation and identifying disabled persons with whom to consult, the school district can also help a locality avoid "reinventing the wheel." People on the school system's staff might be able to offer low-cost or no-cost ideas for making programs and policies accessible to persons with disabilities. They also might offer advice on avoiding costly structural changes to buildings through the use of facilities already made accessible by the school district (for example, moving public meetings to an accessible elementary school).

Local hospitals and health facilities also could be

good resources for ADA guidance.

who's in charge of the self-evaluation?

The law leaves no doubt that local officials are responsible for conducting the self-evaluation and for following up on its findings. As mentioned earlier, the rules do not dictate format or organization.

One reason for the self-evaluation is that local officials, citizens with disabilities and their representatives and organizations should know what procedures will work best in the community. Therefore, the following details are best resolved at the local level:

- How long should the self-evaluation/consultation process take?
- Should the consultation be with a group or individuals?
- How many people should be included?
- How should they be selected?
- How often should they meet?
- How formal or informal should the meetings be?
- What kind of records, if any, should be kept?
- Should the consultation group be divided into subgroups?

One other important point: remember, the requirement is that local officials consult with others in the self-evaluation. But the decisions are made by the local government. There is no requirement that local officials accept the recommendations offered by the persons being consulted.

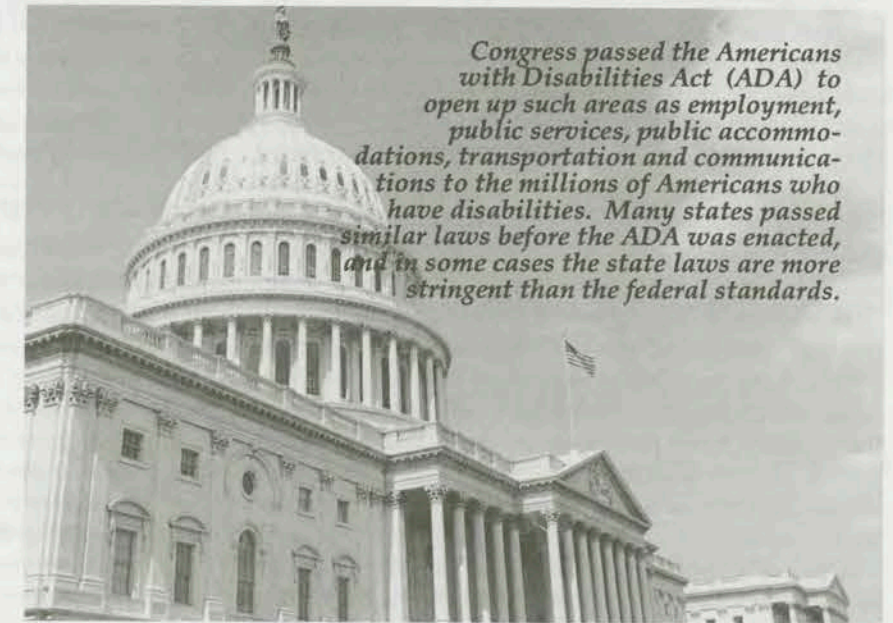
what should we do if we miss the deadline?

January 26, 1993, is a critical date for local government compliance with ADA regulations. By this date, all localities must have completed three tasks:

- a self-evaluation of all programs, activities and policies
- all non-structural changes resulting from the self-evaluation
- a transition plan for any structural changes, including a schedule for when they will be phased in (remember, the deadline for completion of structural changes is January 26, 1995)

Many localities will not finish this work by the deadline. What happens then?

Obviously, no local government should stop working on the self-evaluation and transition plan just because January 26, 1993, has come and gone. In compliance



matters, it is always better to show movement toward a goal or required action than to do nothing and appear to be ignoring statutory requirements.

If a deadline is missed, the locality should place a note in its files, briefly explaining the reasons why the self-evaluation and structural and non-structural changes were not completed as scheduled. This way, an auditor will see that the local government is aware of the problem and is taking action to rectify the situation.

how do we review employment practices?

The ADA rules prohibit discrimination on the basis of disability against qualified persons who have disabilities. The emphasis is on **qualified**. As noted in chapter 4 on employment, the ADA does not require local governments to hire someone who is not qualified for the job.

The problem is that many local governments do not have standards for the jobs they offer, nor job descriptions. Without job standards or descriptions, how can an employer know whether any candidate is qualified?

With **relevant** job standards and descriptions, an employer has a valid reason for not hiring anyone (of any color, race, sex, national origin or disability status) who does not meet the standards—because he or she is not qualified for the job! Without a standard, employers are reduced to making a decision on whether they "think" the candidate will do a good job or whether they "like" one person more than another. Legally, this fits the classic case of employment discrimination. Without written standards, illegal criteria can enter the decision-making process, and the person with a disability will have no grounds for establishing the real basis for the decision.

If a locality does not have relevant job standards and position descriptions and wants to start the process of developing them, there are many resources to consult. State agencies, local community colleges, other local governments and school districts, employment agencies and personnel directors of local firms might be possibilities, as would a retired personnel executive living in the community. By starting the process, a community will also be demonstrating that it has a commitment to equal employment opportunity.

In addition to having job standards and making sure that they measure what is really required to do a particular job, there are other employment practices which an ADA self-evaluation team might look at to make sure that a policy is not having an unintentional discriminatory impact on persons with disabilities. In most instances, discrimination in the employment of persons with disabilities is unintentional; a local government is simply following long-established practices and has never considered their impact. This review of employment policies and practices is a major part of the ADA self-evaluation (see chapter 4).

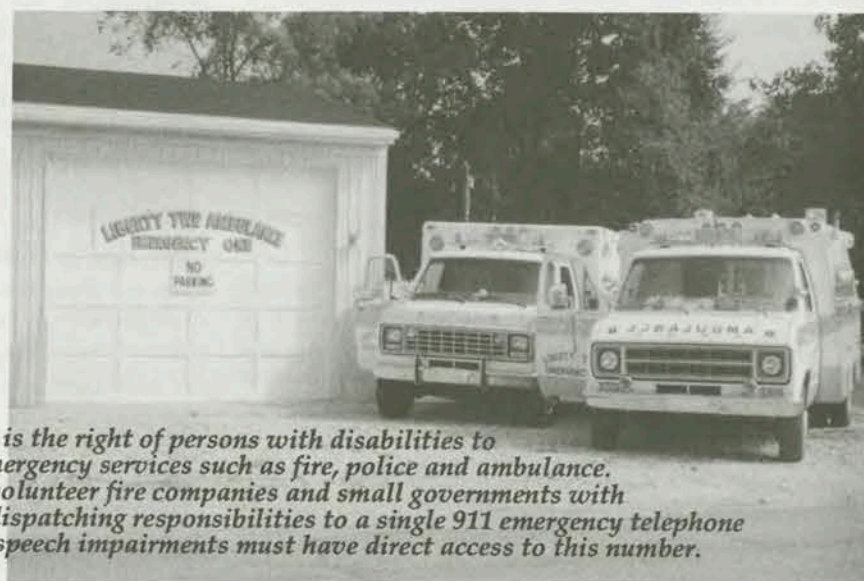
Employment practices which should be reviewed as part of the self-evaluation are:

- employment applications
- recruitment procedures/advertising for jobs
- promotion/transfer policies
- pay scales
- fringe benefits
- training opportunities
- testing procedures
- pre-offer inquiries and medical exams
- access to the work place

what is "program accessibility?"

It is very important to note that the ADA regulations require that programs be accessible—not necessarily the buildings in which they are located. In fact, the rules state that major architectural and structural changes should be viewed as the last resort in making programs accessible. The challenge for local officials and the self-evaluation team is to find low-cost or even no-cost ways to make programs accessible to person with disabilities when

One of the cornerstones of the ADA is the right of persons with disabilities to communicate directly with local emergency services such as fire, police and ambulance. For cost and safety reasons, many volunteer fire companies and small governments with limited resources have centralized dispatching responsibilities to a single 911 emergency telephone number. Persons with hearing and speech impairments must have direct access to this number.



major architectural or structural changes are not required.

The regulations go on to say that a government program should be accessible "when viewed in its entirety." This means that even if it becomes necessary to make certain structural changes, neither every government facility nor every part of every facility need be accessible.

what is a "program?"

Sometimes local officials undertaking a self-evaluation do not know where to start in identifying the locality's programs that should be reviewed. Local governments are organized in many different ways and provide a variety of services, so the following list of programs is meant only to stimulate thinking about how to look at a government's services and to incorporate necessary changes in the self-evaluation:

- public safety—police, fire, ambulance, rescue
- transportation—roads, bridges, snow removal, transit services
- environment—clinics, hospitals, animal control
- libraries—access to collections, audio-visual programs
- recreation—parks, playgrounds, swimming pools, summer camps, community centers
- senior services—senior citizen centers, nutrition programs, outreach services
- services for the poor—general assistance, day care centers, food stamps
- financial/general administration—tax collection/assessment, voting, public hearings, public notices, town board meetings

Later in this chapter, there is a checklist which can be used for evaluating program accessibility. Remember, it is just one way to approach this part of the self-evaluation; there is no single "right way."

what about contractual relationships?

Regulations stipulate that benefits and services provided to town employees or citizens through a contractual agreement with the town government must comply with ADA. The local government is responsible for reviewing these contractual agreements as part of the self-evaluation.

In general, the rules apply to organizations outside the government that provide services to or for the locality. Included among these groups might be:

- labor unions
- providers of fringe benefits
- employment agencies
- training organizations

The same rules apply to services for citizens which the government supplies on a contract basis, such as:

- firefighting
- recreation
- garbage collection

While local governments must make certain that the services for which they contract (in public services, benefits, employment, etc.) conform to the ADA, they are not responsible for the contractor's internal compliance with the ADA. For example, a township does not have to monitor the employment practices of a private snow removal firm, only that its provision of service to the township's citizens is in accordance with the ADA.

additional administrative requirements

In addition to performing the self-evaluation and instituting a transition plan, localities with 50 or more employees must maintain on file and make available for public inspection:

- a list of the interested persons consulted during the self evaluation
- a description of areas examined and any problems identified
- a description of any modifications made

In addition, governments with 50 or more employees must appoint at least one employee to coordinate compliance efforts and establish a grievance procedure for all complaints alleging ADA violations. These complaint procedures, along with the name(s) of the designated employee(s), must be widely publicized.

Methods to make the public aware of services, policies, grievance procedures, etc. include:

- the local telephone book (perhaps including a general TDD number)
- brochures (in alternative, accessible formats)
- community relations program
- radio or TV spots (latter could include captioning)
- school programs
- public relations training

- communication with and participation in civic clubs, disability groups, etc.

Local officials should carefully think through which methods will reach specific sectors of the disability community (hearing impaired, sight impaired, mentally retarded, etc.).

Even local governments with fewer than 50 employees should consider adopting the procedures outlined above. They provide further evidence of a community's "good faith effort" to comply with the ADA and record of these efforts if challenged.

EMPLOYMENT CHECKLIST

A review of employment practices and contractual arrangements is an important part of a locality's self-evaluation. The checklist below is designed to help the self-evaluation group determine whether existing employment policies have a tendency to discriminate against people with disabilities.

Any problem areas which are discovered as part of the review of employment practices should be scheduled for corrections as part of the self-evaluation.

application form, recruiting practices and advertising

- Application forms, recruiting materials and employment interviews do not request information about an applicant's physical or mental condition.
- Job openings are advertised in several different ways to invite interest by qualified persons with disabilities (for example, newspapers, bulletin boards, radio, television and newsletters and bulletin boards of disability and rehabilitation organizations).
- Word-of-mouth is not the sole or primary recruiting method used by the town.

testing procedures and physical examinations

- Any employment test or other selection method used by the town is strictly job-related. It does not ask for information or qualifications which are not necessary for the performance of the job.
- All employment tests are administered fairly to applicants with disabilities (for example, applicants with vision impairments are not required to complete a written exam without an accommodation).
- Persons with disabilities are permitted to bring with them special equipment as a reasonable accommodation to take tests that are administered to non-disabled persons without the use of the special equipment.
- Physical exams are not a pre-employment requirement. When they are required, they measure only essential job functions and are administered uniformly to all prospective employees.

position description and salary assignments

- Job descriptions focus on the objectives of the position, or the purpose of specific tasks, rather than the customary manner in which such tasks have been performed.
- The town has position descriptions or similar documentation which describe the standards and qualifications for each job. These are the standards against which job applicants will be evaluated. (ADA does not require job descriptions, but they are highly recommended.)
- Job descriptions refer to physical and mental abilities only as they relate to the performance of a particular task.
- Employees with disabilities are not offered a lower salary or wage rate, denied overtime or subjected to other unequal practices that would result in potentially lower earnings than those of employees who hold similar jobs and have no disability.

fringe benefits and training opportunities

- Fringe benefits (such as annual leave, sick leave, health and life insurance, retirement, etc.) are offered on an equal basis to disabled and non-disabled employees. Benefit providers, in turn, are covered by Title III of the ADA and may not discriminate in offering services.
- Employee social and recreational activities sponsored by the town (or its contractors) are accessible to employees with disabilities.
- If the town offers training programs for employees, they are offered on an equal basis to disabled and non-disabled employees.

access to the work area

- See the physical access checklist which follows.

job assignments and work schedules

- In order to offer reasonable accommodation to qualified employees with disabilities, the town is prepared to re-assign non-essential job tasks to other employees.
- Town policy does not prohibit the temporary or permanent modification of work schedules in order to accommodate the transportation arrangements or medical requirements of employees with disabilities.

PROGRAM ACCESSIBILITY CHECKLIST

The checklist which follows allows the locality to subdivide its programs into activities, evaluate the activities in terms of a variety of disabilities, identify easily any program accessibility problems by activity, indicate possible remedies, identify no-cost, non-structural and structural solutions and schedule any structural modifications.

The checklist really is a self-evaluation and transition plan for program accessibility rolled into one. Remember, this is just one approach; there is no "right way."

This section includes a completed example of the Program Accessibility Checklist as well as a blank copy of the checklist. The blank copy can be reproduced and used by the self-evaluation group for each governmental program being reviewed. In the example, we have divided the programs of the Independence Township Community Center into three activities: senior programs, youth programs, social services. These same programs could be divided in a number of different ways: nutrition, recreation, counseling, etc.; or by schedule: Monday, 9-11 a.m., Tuesday, 4-6 p.m., etc. How you divide the programs depends on what works best for your community. There is no "right way."

Please note that the example shows a variety of non-structural and low-cost remedies. The self-evaluation group, including disabled persons or their representatives, is likely to come up with many other creative ways to comply.

Some examples of ways to make programs accessible without changing a building include:

- move services to an accessible location (relocate public hearings from the second floor of the town hall to the modern elementary school down the street or to a nearby hospital)
- use volunteer aides
- institute or expand home visits to bring services to disabled persons (should be used only when other approaches are inappropriate, so as not to segregate persons with disabilities from others receiving the same service)
- use absentee ballots or curb service as a short-term solution to an inaccessible polling place (moving a polling place to an accessible site is better)
- use public service announcements (PSAs) on radio or television to make important government announcements accessible to persons with visual or hearing impairments (include captioning for PSAs on TV)
- set up a desk in an accessible area for use by any government office when dealing with persons who have disabilities
- contact local disability groups, the school district or local hospital to help draw up the transition plan

Even if structural changes are necessary, there are ways to minimize or reduce costs. Some examples:

- solicit donated supplies or services from local merchants or social groups
- with proper supervision, utilize volunteer labor from civic or religious organizations or schools
- locate local experts (such as architects or contractors) who might donate time and expertise
- use innovative designs that are safe and meet

ADA standards

Structural changes do not have to be "state of the art," but they must be effective. Of course, it does not make economic sense to construct an outdoor ramp with improper materials, only to have to replace it within a year.

physical access checklist

In some communities, structural changes are necessary to make a primary building (such as the town hall) accessible to people with disabilities. To help your self-evaluation group think about the kind of structural changes which may be required, we have included this physical access checklist.

The self-evaluation group may decide that only a few of these questions apply to your community's facilities,

PHYSICAL ACCESS CHECKLIST

parking

- Are clearly marked parking spaces set aside for people with disabilities near the facility (the number of spaces should be sufficient for local conditions)?
- If these spaces are next to other parking spaces, are they wide enough to accommodate people with disabilities (usually at least 13 feet wide)?
- Will a sloped or unsmooth surface in the parking area (sand, gravel, etc.) create a hazard for people with disabilities?
- Will people with disabilities using these spaces have to walk or wheel behind parked vehicles to reach a building?
- If there are curbs in the parking areas, are there ways for people using wheelchairs to reach the building (curb cuts, ramps, etc.)?

walkways

- Are walkways wide enough for wheelchairs (usually at least four feet wide)?
- Are walkways in good repair and reasonably free of abrupt changes in slope?
- If there are drop-offs at the sides of walkways, are these hazards marked with railings or fences?

entrances, exits and stairs

- Are primary entrances and exits sufficiently level to allow access by persons using wheelchairs?
- If ramps are used for disability access, are they sloped gently (no more than a one-foot rise in 12 feet)?
- Do ramps have handrails?
- Is the surface of the ramp "non-slip?"
- Are stair surfaces "non-slip?"

or that solutions to certain questions are more crucial and useful than others. For example, your first priority may be to see that people who use wheelchairs are able to enter the town hall to conduct town-related business or to be employed by the town. Or, the group may decide to supplement this list and seek other solutions from a local expert. People with disabilities in your self-evaluation group can help to identify low-cost or no-cost ways to make facilities accessible.

In any case, remember that your first task is to determine how obstacles can be overcome without making structural changes. When the self-evaluation group knows which obstacles can be remedied only through structural modifications, this checklist may be helpful.

facility interiors

- Are there protruding objects (coat racks, filing cabinets, etc.) in the hallways which might present obstacles to persons with disabilities?
- Are restrooms (toilets, sinks, soap and towel dispensers, entrances, etc.) usable by persons in wheelchairs?
- Are water fountains operable by persons using wheelchairs?
- If there are public telephones, are any equipped for use by persons with hearing impairments?
- Are any public telephones operable by people using wheelchairs?
- Are floor surfaces slippery?
- Can people using wheelchairs operate any elevators which are in the facility?
- Do telephones and elevators have braille letters and numbers for use by persons with sight disabilities?
- Can people using wheelchairs reach the switches or controls for lights, heat, ventilation, windows, draperies and fire alarm?
- Do fire alarms have sight and sound signals so that hearing impaired persons will be warned in case of an emergency?



Many local governments already provide parking for persons with disabilities at town halls and at other facilities in which government services are offered. The spaces themselves must be clearly marked with the universal access symbol and conform to other requirements involving length, width, surface materials and maximum slope. Local officials can use the Physical Access Checklist on page 53 to ensure that parking spaces for the disabled are appropriately designated and meet safety specifications.

Program Accessibility Checklist

JURISDICTION: **Independence Township**

Cover Sheet

DATE: **September 15, 1992**

NAME OF PROGRAM OR ACTIVITY:

Independence Township Community Center

LIST OF MAJOR PROGRAM COMPONENTS:

1. **Senior citizen programs (lunch program; arts and crafts; social events; information and referral)**
2. **Youth programs (after-school recreation; dances; sports programs)**
3. **Social services (counseling; surplus food distribution; well-baby clinic)**

Program Accessibility Checklist

JURISDICTION: Independence Township **Record of Deficiencies and Non-Structural Solutions**

Use one of these sheets for each program component identified on the cover of the checklist. Record the self-evaluation group's findings of programs or activities that are not accessible to people with disabilities, along with recommended **non-structural** remedies. If the same deficiency is identified for several program components (inaccessible restrooms, for example), you might want to include it under just one of the components.

A separate chart will cover those problems which require a structural change to a building or facility.

ACTIVITY <u>Senior Citizen Programs</u>		
	Deficiencies	Non-Structural Solutions
Mobility	<ol style="list-style-type: none"> 1. Slippery floor near lunchline is hazardous for seniors using canes. 2. A man has trouble maneuvering his wheelchair through the crowded lunchline. 3. Two steps at entrance make multi-purpose room inaccessible. 	<ol style="list-style-type: none"> 1. Use non-slip runners or mats during lunch. 2. Invite him to go through lunchline first. 3. Structural solution needed; see transition plan.
Visual	<ol style="list-style-type: none"> 1. Lunch menu is publicized in newspaper only. 2. Playing cards and books are difficult to use for several seniors with cataracts. 	<ol style="list-style-type: none"> 1. Town clerk will provide menu information by phone. 2. Purchase playing cards and games in large print; arrange for free services from talking book library.
Hearing	<ol style="list-style-type: none"> 1. A woman is often isolated during social events, due to her hearing loss. 	<ol style="list-style-type: none"> 1. Accept offer from Mr. Wallace (who teaches sign language at the community college) to lead a signing course at the community center. 2. Provide an interpreter.

ACTIVITY <u>Senior Citizen Programs</u>		
	Deficiencies	Non-Structural Solutions
Developmental	<ol style="list-style-type: none"> 1. A women's cerebral palsy gives her trouble climbing the two steps in and out of the multi-purpose room. 	<ol style="list-style-type: none"> 1. Structural solution needed; see transition plan.
Psychological	<ol style="list-style-type: none"> 1. No problems identified. 	
Drug/Alcohol Related	<ol style="list-style-type: none"> 1. A man (a rehabilitated alcoholic) stopped coming to the crafts program, because he felt rejected by other seniors. 	<ol style="list-style-type: none"> 1. Locate a speaker from a local organization to make a presentation on the problems of recovered alcoholics. 2. Publicize policy against non-discrimination.

Program Accessibility Checklist

JURISDICTION: Independence Township **Record of Deficiencies and Non-Structural Solutions**

Use one of these sheets for each program component identified on the cover of the checklist. Record the self-evaluation group's findings of programs or activities that are not accessible to people with disabilities, along with recommended non-structural remedies. If the same deficiency is identified for several program components (inaccessible restrooms, for example), you might want to include it under just one of the components.

A separate chart will cover those problems which require a structural change to a building or facility.

ACTIVITY Youth Programs

Deficiencies

Non-Structural Solutions

Mobility	<ol style="list-style-type: none"> 1. Training for youth program leaders is conducted in multi-purpose room which is not accessible. 2. Rear outside entrance to multi-purpose room (used for dances) has several steps. 	<ol style="list-style-type: none"> 1. Structural solution needed; see transition plan. 2. Once multi-purpose room is made accessible, use building's main entrance for dances.
Visual	<ol style="list-style-type: none"> 1. Materials used at after-school program are in print only. 	<ol style="list-style-type: none"> 1. Borrow non-print teaching materials already designed by the local school system.
Hearing	<ol style="list-style-type: none"> 1. Deaf teen wants to join softball team. We're unsure how to include him. 	<ol style="list-style-type: none"> 1. Use written instructions and hand signals during games; allow a relative to attend team meetings to interpret for him if no interpreter is otherwise available.

ACTIVITY Youth Programs

Deficiencies

Non-Structural Solutions

Developmental	<ol style="list-style-type: none"> 1. Mentally retarded youth are inadvertently excluded from dances. 	<ol style="list-style-type: none"> 1. Set up an experimental buddy program assigning one then to each mentally retarded youth.
Psychological	<ol style="list-style-type: none"> 1. Certain hyperactive youth find it difficult to participate in organized after school activities requiring relatively lengthier periods of concentration (reading or study periods, for example). 	<ol style="list-style-type: none"> 1. Allow these children to take short breaks to walk around the center or outside, accompanied by a program volunteer.
Drug/Alcohol Related	<ol style="list-style-type: none"> 1. No problems identified. 	

Program Accessibility Checklist

JURISDICTION: Independence Township **Record of Deficiencies and Non-Structural Solutions**

Use one of these sheets for each program component identified on the cover of the checklist. Record the self-evaluation group's findings of programs or activities that are not accessible to people with disabilities, along with recommended non-structural remedies. If the same deficiency is identified for several program components (inaccessible restrooms, for example), you might want to include it under just one of the components.

A separate chart will cover those problems which require a structural change to a building or facility.

ACTIVITY Social Services

Deficiencies

Non-Structural Solutions

Mobility	<ol style="list-style-type: none"> 1. Food distribution conducted through the rear entrance to the classroom, which is inaccessible. 2. Arrangement of equipment and furniture in the well-baby clinic makes wheelchair access difficult. 	<ol style="list-style-type: none"> 1. Volunteers will provide curb service on food distribution days. 2. Rearrange equipment and furniture. 3. Structural solution needed; see transition plan.
Visual	<ol style="list-style-type: none"> 1. Food distribution schedule is announced in newspaper only. 2. Fact sheets and parent information at well-baby clinic are in print only. 	<ol style="list-style-type: none"> 1. Contact radio station WTWP for guidelines on public service announcements. Make sure town clerk has the schedule. 2. Use volunteers to tape-record parent information.
Hearing	<ol style="list-style-type: none"> 1. A deaf mother could not communicate with the counselor. 	<ol style="list-style-type: none"> 1. When requested in advance, arrange for interpreter through the community college or public schools.

ACTIVITY Social Services

Deficiencies

Non-Structural Solutions

Developmental	<ol style="list-style-type: none"> 1. A person with a speech impediment could not be understood adequately by the counselor. 	<ol style="list-style-type: none"> 1. Provide note pads and pencils in the counseling office.
Psychological	<ol style="list-style-type: none"> 1. No problems identified. 	
Drug/Alcohol Related	<ol style="list-style-type: none"> 1. No problems identified. 	

Program Accessibility Checklist

JURISDICTION: **Independence Township**

Transition Plan for Structural Changes

This chart will "map out" how and when your local government proposes to remedy program accessibility problems which require a **structural change** to a building or facility. This is called a transition plan.

You will want to identify several things in the transition plan: **what** needs to be done; **how** the facility will be made accessible; **when** the alterations will be completed; **who** is responsible for implementing the plan. You might also want to include an estimate of **how much** the changes will cost.

Structural Change:

Make entrance to multi-purpose room in community center accessible to persons with mobility impairments.

What needs to be done?

Construct and install heavy-duty ramps that conform with maximum angles of rise allowed by the ADA (1-foot rise in 12-foot ramp) from entrance hall to multi-purpose room.

How will the facility be made accessible?

1) Lambert Lumber will donate all materials. 2) Design and labor to be provided by voc-tech carpentry students supervised by qualified instructor (Mr. McArthur).

When will the alterations be completed?

1) Materials will be available by the end of the month. 2) Construction and installation during the next school semester.

Who is responsible for implementing the plan?

Town clerk, with technical advice from self-evaluation group member, Mrs. Snyder.

How much will the changes cost?

No direct cost.

Program Accessibility Checklist

JURISDICTION: **Independence Township**

Transition Plan for Structural Changes

This chart will "map out" how and when your local government proposes to remedy program accessibility problems which require a **structural change** to a building or facility. This is called a transition plan.

You will want to identify several things in the transition plan: **what** needs to be done; **how** the facility will be made accessible; **when** the alterations will be completed; **who** is responsible for implementing the plan. You might also want to include an estimate of **how much** the changes will cost.

Structural Change:

Make community center restrooms accessible to people with mobility impairments.

What needs to be done?

- 1) Women's restroom: enlarge second toilet stall by moving one wall panel.**
- 2) Men's restroom: remove second urinal and enlarge toilet stall into that space**
- 3) Add grab bars to stalls in both restrooms.**
- 4) Replace faucet handles with handles which are easier to operate.**
- 5) Lower paper towel dispenser in both restrooms.**
- 6) Make certain outer doors can be opened both ways by persons using wheelchairs and with other mobility impairments.**

How will the facility be made accessible?

- 1) Contract for alterations to plumbing and stalls.**
- 2) Accept Booten Hardware's offer to sell faucet handles at cost.**
- 3) Have township maintenance personnel install new faucet handles and lower the paper towel dispensers.**

When will the alterations be completed?

Within 3 months.

Who is responsible for implementing the plan?

Town Clerk

How much will the changes cost?

Plumbing and alterations contract: \$700-1,200; 2 pair faucet handles at cost: \$45

**THE BLANK FORMS ON THE FOLLOWING
FOUR PAGES ARE INTENDED FOR USE BY
LOCAL OFFICIALS IN CONDUCTING THEIR
ADA SELF-EVALUATIONS. IT IS
SUGGESTED THAT YOU PHOTOCOPY THE
FORMS FOUND IN THE WORKBOOK, SO
THAT YOU WILL HAVE BLANK FORMS TO
USE WHENEVER YOU NEED THEM.**

Program Accessibility Checklist

JURISDICTION:

Record

Cover Sheet

DATE:

NAME OF PROGRAM OR ACTIVITY:

LIST OF MAJOR PROGRAM COMPONENTS:

Program Accessibility Checklist

JURISDICTION:

Record of Deficiencies and Non-Structural Solutions

Use one of these sheets for each program component identified on the cover of the checklist. Record the self-evaluation group's findings of programs or activities that are not accessible to people with disabilities, along with recommended **non-structural** remedies. If the same deficiency is identified for several program components (inaccessible restrooms, for example), you might want to include it under just one of the components.

A separate chart will cover those problems which require a **structural change** to a building or facility.

ACTIVITY

Deficiencies

Non-Structural Solutions

	ACTIVITY	
	Deficiencies	Non-Structural Solutions
Mobility		
Visual		
Hearing		

ACTIVITY _____

Deficiencies

Non-Structural Solutions

Developmental		
Psychological		
Drug/Alcohol Related		

Program Accessibility Checklist

JURISDICTION:

Transition Plan for Structural Changes

This chart will "map out" how and when your local government proposes to remedy program accessibility problems which require a **structural change** to a building or facility. This is called a transition plan.

You will want to identify several things in the transition plan: **what** needs to be done; **how** the facility will be made accessible; **when** the alterations will be completed; **who** is responsible for implementing the plan. You might also want to include an estimate of **how much** the changes will cost.

Structural Change:

What needs to be done?

How will the facility be made accessible?

When will the alterations be completed?

Who is responsible for implementing the plan?

How much will the changes cost?

appendix a

federal ADA enforcement agencies

U.S. Department of Justice Civil Rights Division Office on the Americans with Disabilities Act

P.O. Box 66118
Washington, DC 20035-6118
(202) 514-0301 (Voice)
(202) 514-0381 (TDD)
(202) 514-6193 (Electronic Bulletin Board)

U.S. Department of Justice enforces ADA provisions prohibiting discrimination on the basis of disability in state and local government services (Title II). Provides technical assistance to those with rights and responsibilities under the law (including local governments). Publications: *Title II and Title III Regulations*; *ADA Technical Assistance Manual*; books, brochures, and fact sheets focusing on Title II and Title III requirements. Recommended summary documents include *ADA Highlights*; *Title II and The Americans with Disabilities Act*; *Questions and Answers*. These publications are free.

U.S. Equal Employment Opportunity Commission

1801 L St., N.W.
Washington, DC 20507
(800) 669-EEOC (Voice)
(800) 800-3302 (TDD)

U.S. Equal Employment Opportunity Commission enforces Title I provisions prohibiting discrimination in employment against qualified individuals with disabilities. Provides information, speakers, technical assistance, training and referral to specialized resources to employers and people with disabilities, through headquarters

and district offices. Publications: *Title I Regulations*; *ADA Technical Assistance Manual* ("how to" information on Title I compliance and resource directory); booklets on employer responsibilities and rights of individuals with disabilities; questions and answers on ADA employment and public accommodations provisions; fact sheets on ADA and tax credits and deductions for ADA accommodations; and *The Americans with Disabilities Act; Your Responsibilities as an Employer*. These publications are available at no cost.

U.S. Department of Transportation

400 7th St., S.W.
Washington, DC 20590
(202) 366-9305 (Voice)
(202) 755-7687 (TDD)

U.S. Department of Transportation enforces ADA provisions that require non-discrimination in public (Title II) and private (Title III) mass transportation systems and services.

Federal Communications Commission

1919 M St., N.W.
Washington, DC 20554
(202) 632-7260 (Voice)
(202) 632-6999 (TDD)

Federal Communications Commission enforces ADA telecommunications provisions, which require that companies offering telephone service to the general public must offer telephone relay services to individuals who use text telephones or similar devices.

ENFORCEMENT OF ADA EMPLOYMENT PROVISIONS

Procedures for enforcing the ADA employment provisions will differ, depending on whether a town government is covered by the regulations for ADA or for Section 504 of the federal Rehabilitation Act of 1973. Contact the Department of Justice to learn which set of enforcement mechanisms will be used and which federal agencies have jurisdiction.

Generally, enforcement authority will be divided as follows:

If a town government is covered by the ADA or section 504 and receives federal funding, a complaint must be filed with and will be investigated by the federal agency that supplies those funds.

If a town government is covered by the ADA employment regulations and receives no federal funding, a complaint must be filed with and will be investigated by the Equal Employment Opportunity Commission.

If a town government is covered by the section 504 employment regulations (any town government with fewer than 15 employees) and receives no federal funding, a complaint must be filed with and will be investigated by the Department of Justice. (See chapter 3 for a discussion of enforcement.)

Local governments may wish to contact the Department of Justice concerning how it intends to coordinate enforcement procedures for complaints covered by the situations described above. Unlike the requirements for local government programs and services, the ADA employment provisions require that a person with a disability must first exhaust all administrative remedies before filing a private law suit. But if the town government receives federal funding, a federal agency can terminate federal funds for employment discrimination.

For town governments that are covered by Title I of ADA (those with 15 or more employees), remedies for employment discrimination generally mirror those found in Title VII of the Civil Rights Act of 1964 as expanded by the Civil Rights Act of 1991. The ADA provides the following remedies for employment discrimination:

- injunctions (hiring, reinstatement, promotion, provision of reasonable accommodation)
- back pay
- interest on back pay
- front pay (monetary compensation in lieu of reinstatement)
- attorney's fees, expert witness fees, court costs

Compensatory damages are available to individuals

who have suffered intentional discrimination based on disability. Such damages include:

- past financial losses
- future financial losses
- non-financial losses (emotional pain, suffering, inconvenience, mental anguish)

State and local governments are liable for compensatory damages, but not punitive damages. Only private employers may be liable for punitive damages.

The following limitations apply to the award of compensatory damages:

Compensatory damages are available only if the employer intentionally discriminates against the individual. They are prohibited in cases where an employer's policies or practices unintentionally screen out, or tend to screen out, a person or class of persons with a disability because of the disability. For example, a town government may require job applicants to have a driver's license. This requirement could screen out persons with certain disabilities (e.g., vision impairments, epilepsy), even though this was not the government's intent. In this situation, the employer would not be liable for compensatory damages.

In cases involving discrimination on the basis of **failure to provide a reasonable accommodation**, compensatory damages are not available if a town government shows that it made a **good faith effort**, in consultation with the disabled individual, to identify and provide a reasonable accommodation.

A person with a disability may be awarded full compensation for past financial losses. There are caps, however, on the total amount that may be awarded for **future financial losses and non-financial losses**. The caps, based on the size of the employer, operate as follows:

\$50,000	if the employer has 15-100 employees
\$100,000	if the employer has 101-200 employees
\$200,000	if the employer has 201-500 employees
\$300,000	if the employer has 501+ employees

If a town government is covered by the section 504 regulations, available remedies include:

- injunctions (e.g., hiring, reinstatement, promotion, provision of reasonable accommodation)
- back pay
- interest on back pay
- front pay (monetary compensation in lieu of reinstatement)
- attorney's fees, expert witness fees, court costs

Compensatory and punitive damages may be available in certain states, depending on court interpretations of section 504. You can contact your state attorney general's office to obtain such information.

appendix b

federal and federally-funded ADA technical assistance agencies

Congress mandated the National Institute on Disability and Rehabilitation Research to establish 10 regional centers to provide information, training and technical assistance to employers, people with disabilities and other entities with responsibilities under the ADA. The centers act as a "one-stop" central source of information, direct technical assistance, training and referral on ADA issues in employment, public accommodations, public services and communications. Programs vary in each region, but all centers provide the following:

- Individualized responses to information requests
- Referrals to local sources of expertise in all aspects of ADA compliance
- Training on ADA and disability awareness
- Direct technical assistance

Region I:

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
New England Disability and Business Technical Assistance Center
145 Newbury St.
Portland, ME 04101
(207) 874-6535 (Voice/TDD)

Region II:

New Jersey, New York, Puerto Rico, Virgin Islands
Northeast Disability and Business Technical Assistance Center
354 South Broad St.
Trenton, NJ 08608
(609) 392-4004 (Voice)
(609) 392-7044 (TDD)

Region III:

Delaware, DC, Maryland, Pennsylvania, Virginia, West Virginia
Mid-Atlantic Disability and Business Technical Assistance Center
2111 Wilson Blvd., Suite 400
Arlington, VA 22201
(703) 525-3268 (Voice/TDD)

Region IV:

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Southeast Disability and Business Technical Assistance Center
1776 Peachtree St.
Suite 310 North
Atlanta, GA 30309
(404) 888-0022 (Voice)
(404) 888-9007 (TDD)

Region V:

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Great Lakes Disability and Business Technical Assistance Center
1640 West Roosevelt Rd. (M/C 627)
Chicago, IL 60608
(312) 413-1407 (Voice)
(312) 413-0453 (TDD)

Region VI:

Arkansas, Louisiana, New Mexico,
Oklahoma, Texas
Southwest Disability and Business Technical
Assistance Center
2323 South Shepherd Blvd., Suite 1000
Houston, TX 77019
(713) 520-0232 (Voice)
(713) 520-5136 (TDD)

Region VII:

Iowa, Kansas, Nebraska, Missouri
Great Plains Disability and Business Technical
Assistance Center
4816 Santana Drive
Columbia, MO 65203
(314) 882-3600 (Voice/TDD)

Region VIII:

Colorado, Montana, North Dakota,
South Dakota, Utah, Wyoming
Rocky Mountain Disability and Business Technical
Assistance Center
3630 Sinton Rd., Suite 103
Colorado Springs, CO 80907-5072
(719) 444-0252 (Voice)
(719) 444-0268 (TDD)

Region IX:

Arizona, California, Hawaii, Nevada
Pacific Coast Disability and Business Technical
Assistance Center
440 Grand Ave., Suite 500
Oakland, CA 94610
(510) 465-7884 (Voice)
(510) 465-3172 (TDD)

Region X:

Alaska, Idaho, Oregon, Washington
Northwest Disability and Business Technical
Assistance Center
605 Woodview Dr.
Lacey, WA 98503
(206) 438-3168 (Voice)
(206) 438-3167 (TDD)

Job Accommodation Network

P.O. Box 6123
809 Allen Hall
Morgantown, WV 26506-6123
(800) 526-7234 (*Accommodation Information;
out-of-state only; Voice/TDD*)
(800) 526-4698 (*Accommodation Information;
in-state only; Voice/TDD*)
(800) ADA WORK[(800) 232-9675] (*ADA Information;
Voice/TDD*)
(800) DIAL JAN[(800) 342-5526] (*Information; modem*)

Free consultant service funded by the President's Committee on Employment of People with Disabilities. Through telephone consultation, provides information and advice to employers and people with disabilities on custom job and worksite accommodations. Performs individualized searches for workplace accommodations, based on the job's functional requirements, the functional limitations of the individual, environmental factors and other pertinent information.

ADA Work Line is staffed by people experienced in discussing the application of the ADA, especially as it relates to accommodation and accessibility issues.

Videotape: *Bridging the Talent Gap* features a variety of individuals with disabilities successfully employed as a result of vocational rehabilitation and on-the-job accommodation; descriptive literature on JAN services.

Architectural and Transportation Barriers Compliance Board

1111 18th St., N.W., Suite 501
Washington, DC 20036-3894
(800) USA-ABLE (Voice/TDD)

Sets guidelines adopted as accessibility standards under Titles II and III of the ADA. Provides information on technical and scoping requirements for accessibility and offers general technical assistance on the removal of architectural, transportation, communication and attitudinal barriers affecting people with disabilities. **Publications:** Uniform Federal Accessibility Standards Accessibility Checklist; booklist and guides on barrier-free design, accessible rest rooms, wheelchair lifts and slip resistant surfaces, transit facility designs, assistive listening devices, visual alarms, airport TDD access and air carrier policies affecting people with disabilities.

Disability Rights Education and Defense Fund (DREDF)

2212 Sixth St.
Berkeley, CA 94710
ADA Hotline: (800) 466-4ADA (Voice/TDD)
(415) 644-2555 (Voice)
(415) 644-2625 (TDD)

Has established a telephone information line to answer ADA questions (emphasis on Titles II and III) and respond to requests for ADA materials.

National Conference of States on Building Codes and Standards

505 Huntmar Park Dr., Suite 210
Herdon, VA 22070
(703) 437-0100

In conjunction with the Paralyzed Veterans of America (PVA), will promote the certification of state codes for equivalency with ADA standards, and encourage the development of alternative dispute resolution procedures within the existing state regulatory framework.

Information Access Project National Federation of the Blind

1800 Johnson St.
Baltimore, MD 21230
(301) 659-9314

Will help entities covered by the ADA find methods for converting visually displayed information, such as flyers, brochures and pamphlets, to formats accessible to individuals who are visually impaired.

appendix c

non-governmental technical assistance resources

American Bar Association Commission on Mental and Physical Disability Law

1800 M St., N.W.
Washington, DC 20036
(202) 331-2240

Provides information and technical assistance on all aspects of disability law. Offers training to employers and individuals with disabilities on ADA history, requirements and compliance, covering such topics as the definition of "disability," permissible hiring questions, essential job functions, medical questions and examinations, reasonable accommodation, attitudinal barriers and architectural and design adjustments.

American Council of the Blind

1155 15th St., N.W., Suite 720
Washington, DC 20005
(202) 467-5081
(800) 424-8666 (3:00-5:30 PM EST)

Provides information on topics affecting the employment of individuals who are blind, including job seeking strategies, job accommodations, electronic aids and employment discrimination.

American Foundation for the Blind

15 West 16th St.
New York, NY 10011
(212) 620-2000 or (212) 620-2047 (Voice)
(212) 620-2067 (TDD)

Provides information and referral to employers and individuals with disabilities on adaptive and assistive technology and worksite modifications for persons who are blind and visually impaired.

The American Institute of Architects

1735 New York Ave., N.W.
Washington, DC 20006
(202) 626-7300

Provides workshops, seminars, and technical materials to architects and their clients on ADA compliance and barrier-free worksites.

The American Occupational Therapy Association

1383 Piccard Dr., P.O. Box 1725
Rockville, MD 20849-1725
(301) 948-9626

Refers employers and individuals with disabilities to occupational therapists with expertise on ADA for help in performing job analyses, identifying job accommodations and modifications, developing job descriptions, modifying job sites, identifying adaptive devices and equipment, acquiring auxiliary aids, identifying architectural barriers and providing sensitivity training.

The ARC (Formerly Association for Retarded Citizens)

500 East Border St., Suite 300
Arlington, TX 76010
(817) 261-6003 (Voice)
(817) 277-0553 (TDD)

Aids the employment of people with mental retardation by providing information and on-site technical assistance to employers who hire, train and retain mentally retarded workers. Provides partial reimbursements to employers for training costs and advice on supervising techniques. Has local chapters.

Barrier Free Environments, Inc.

P.O. Box 30634, Highway 70 West-Watergarden
Raleigh, NC 27622
(919) 782-7823 (Voice/TDD)

Provides consultation and technical assistance on accessibility design at all stages of construction planning or product development.

Disability Rights Education and Defense Fund, Inc.

2212 6th St.
Berkeley, CA 94710
(510) 644-2555 (Voice/TDD)

Provides technical assistance and information to employers and individuals with disabilities on disability rights legislation and policies.

Mainstream, Inc.

3 Bethesda Metro Center, Suite 830
Bethesda, MD 20814
(301) 654-2400 (Voice/TDD)
(301) 654-2401 (Voice/TDD)

Provides on-site accessibility surveys and job analyses and offers advice on cost-effective accommodations for people with disabilities. Provides publications on interviewing job applicants with disabilities, accessibility checklists and architectural barriers and workplace accommodations.

National Association of Towns and Townships (NATaT)

1522 K St., N.W., Suite 600
Washington, DC 20005
(202) 737-5200
(202) 289-7996

Has published a guidebook, *The Americans with Disabilities Act—a compliance workbook for small communities*, that provides guidance on ADA tailored to the capabilities of small towns. Single copies of the workbook sell for \$6 to NATaT members, \$11 to others. Call for information on quantity discounts.

National Braille Press

88 St. Stephen St.
Boston, MA 02115
(617) 266-6160

Provides braille printing services for large publication orders. Offers a free list of organizations that braille individual documents or small publication orders.

National Center for Access Unlimited

155 North Wacker Dr., Suite 315
Chicago, IL 60606
(312) 368-0380 ext. 49 (Voice)
(312) 368-0179 (TDD)

Offers practical ideas for immediate, low-cost accessibility improvements. Locates qualified readers, interpreters, personal assistants and assistive devices; offers consultation on overcoming communications and transportation barriers.

National Clearinghouse of Rehabilitation Training Materials

Oklahoma State University
816 West 6th St.
Stillwater, OK 74078
(405) 624-7650

Provides referral to publications addressing employment-related issues such as job accommodations, assistive technology, job seeking and interviewing skills, job placement, ADA requirements, supervisory techniques, computer applications and interpreter education.

National Down Syndrome Congress

1800 Dempster St.
Park Ridge, IL 60068
(800) 232-6372

Provides general information on Down syndrome and employment of persons with Down syndrome.

National Easter Seal Society

70 East Lake St.
Chicago, IL 60601
(312) 726-6200 (Voice)
(312) 726-4258 (TDD)

Through local affiliates, provides technical assistance and referral to employers and individuals with disabilities on such topics as assistive technology, vocational training and rehabilitation, job site analysis and job function analysis.

National Federation of the Blind Job Opportunities for the Blind

1800 Johnson St.
Baltimore, MD 21230
(800) 638-7518
(301) 659-9314

Assists in locating and hiring qualified blind applicants and offers information and seminars for employers and hiring personnel on the ADA, interviewing blind job applicants and working with blindness.

National Leadership Coalition on AIDS

1730 M St., N.W., Suite 905
Washington, DC 20036
(202) 429-0930

Provides information on AIDS and HIV infection and helps identify accommodations in the workplace.

Paralyzed Veterans of America

801 18th St., N.W.
Washington, DC 20006
(202) 872-1300 (Voice)
(202) 416-7622 (TDD)

Provides consultation and technical assistance to businesses for solving project-specific problems related to architectural accessibility.

Telecommunications for Deaf, Inc.

8719 Colesville Rd., Suite 300
Silver Spring, MD 20910
(301) 589-3786 (Voice)
(301) 589-3006 (TDD)

Acts as a clearinghouse for technology and information services in the field of visual telecommunications. Provides information and referral on assistive devices to overcome communication barriers, including TDD's, emergency access services, visual alerting systems and dual party relay services.

Trace Research and Development Center

S-151 Waisman Center
1500 Highland Ave.
Madison, WI 53705
(608) 262-6966 (Voice)
(608) 263-5408 (TDD)

Provides information on assistive and rehabilitative technology for people with disabilities.

United Cerebral Palsy Associations, Inc.

1522 K St., N.W., Suite 1112
Washington, DC 20005
(202) 842-1266 Voice/TDD
(800) 872-5827 (Voice/TDD)

Through local affiliates, assists with worksite accommodations, environmental controls and assistive technology through local affiliates. Produces printed materials and videos on supported employment and assistive technology and ADA accessibility checklists and informational booklets.

appendix d

equal employment opportunity commission (eEOC) district offices

DISTRICT OFFICES

Listed below are the areas served by EEOC's 23 full-service District Offices and one field office. The addresses of these office follow. The EEOC has 26 additional area and local offices that process charges of discrimination.

To contact area and local EEOC offices, call 1-800-669-4000.

Alabama	Birmingham District Office
Alaska	Seattle District Office
Arizona	Phoenix District Office
Arkansas	Memphis District Office
California	
Northern	San Francisco District Office
Southern	Los Angeles District Office
Colorado	Denver District Office
Connecticut	New York District Office
Delaware	Philadelphia District Office
District of Columbia	Washington Field Office
Florida	Miami District Office
Georgia	Atlanta District Office
Hawaii	San Francisco District Office
Idaho	Seattle District Office
Illinois	
Northern	Chicago District Office
Southwestern	St. Louis District Office
Indiana	Indianapolis District Office
Iowa	Milwaukee District Office
Kansas	St. Louis District Office
Kentucky	Indianapolis District Office
Louisiana	New Orleans District Office
Maine	New York District Office
Maryland	Baltimore District Office
Massachusetts	New York District Office

Chicago District Office

536 South Clark St., Rm. 930-A
Chicago, IL 60605
(312) 353-2713 (Voice)
(312) 353-2421 (TDD)

Cleveland District Office

1375 Euclid Ave., Rm. 600
Cleveland, OH 44115-1808
(216) 522-2001 (Voice)
(216) 942-7296 (TDD)

Dallas District Office

8303 Elmbrook Dr.
Dallas, TX 75247
(214) 767-7015 (Voice)
(214) 729-7523 (TDD)

Denver District Office

1845 Sherman St., 2nd Fl.
Denver, CO 80203
(303) 866-1300 (Voice)
(303) 564-1950 (TDD)

Detroit District Office

477 Michigan Ave., Rm. 1540
Detroit, MI 48226-9704
(313) 226-7636 (Voice)
(313) 226-7599 (TDD)

Houston District Office

1919 Smith St., 7th Fl.
Houston, TX 77002
(713) 653-3377 (Voice)
(713) 522-3367 (TDD)

Indianapolis District Office

46 East Ohio St., Rm. 456
Indianapolis, IN 46204-1903
(317) 226-7212 (Voice)
(317) 331-5162 (TDD)

Los Angeles District Office

3660 Wilshire Blvd., 5th Fl.
Los Angeles, CA 90010
(213) 251-7278 (Voice)
(213) 251-7384 (TDD)

Memphis District Office

1407 Union Ave., Suite 621
Memphis, TN 38104
(901) 722-2617 (Voice)
(901) 222-2604 (TDD)

Miami District Office

1 Northeast First St., 6th Fl.
Miami, FL 33132-2491
(305) 536-4491 (Voice)
(305) 350-5721 (TDD)

Milwaukee District Office

310 West Wisconsin Ave., Suite 800
Milwaukee, WI 53203-2292
(414) 297-1111 (Voice)
(414) 362-1115 (TDD)

New Orleans District Office

701 Loyola Ave., Suite 600
New Orleans, LA 70113
(504) 589-2329 (Voice)
(504) 682-2958 (TDD)

New York District Office

90 Church St., Rm. 1501
New York, NY 10007
(212) 264-7161 (Voice)
(212) 264-7697 (TDD)

Philadelphia District Office

1421 Cherry St., 10th Fl.
Philadelphia, PA 19102
(215) 597-9350 (Voice)
(215) 597-5314 (TDD)

Phoenix District Office

4520 North Central Ave., Suite 300
Phoenix, AZ 85012-1848
(602) 640-5000 (Voice)
(602) 261-2692 (TDD)

San Antonio District Office

5410 Fredericksburg Rd., Suite 200
San Antonio, TX 78229-3555
(512) 229-4810 (Voice)
(512) 730-4858 (TDD)

San Francisco District Office

901 Market St., Suite 500
San Francisco, CA 94103
(415) 744-6500 (Voice)
(415) 484-7392 (TDD)

Seattle District Office

2815 Second Ave., Suite 500
Seattle, WA 98121
(206) 553-0968 (Voice)
(206) 399-1362 (TDD)

Michigan	Detroit District Office
Minnesota	Milwaukee District Office
Mississippi	Birmingham District Office
Missouri	St. Louis District Office
Montana	Denver District Office
Nebraska	Denver District Office
Nevada	Los Angeles District Office
New Hampshire	New York District Office
New Jersey	Philadelphia District Office
New Mexico	Phoenix District Office
New York	New York District Office
North Carolina	Charlotte District Office
North Dakota	Denver District Office
Ohio	Cleveland District Office
Oklahoma	Dallas District Office
Oregon	Seattle District Office
Pennsylvania	Philadelphia District Office
Rhode Island	New York District Office
South Carolina	Charlotte District Office
South Dakota	Denver District Office
Tennessee	Memphis District Office
Texas	
Northern	Dallas District Office
Southwestern	San Antonio District Office
Southeastern	Houston District Office
Utah	Phoenix District Office
Vermont	New York District Office
Virginia	
Northeastern	Washington Field Office
Southwestern	Baltimore District Office
Washington	Seattle District Office
West Virginia	Philadelphia District Office
Wisconsin	Milwaukee District Office
Wyoming	Denver District Office

Commonwealths, Possessions, Territories

American Samoa	San Francisco District Office
Canal Zone	Miami District Office
Guam	San Francisco District Office
Northern Mariana Islands	San Francisco District Office
Puerto Rico	New York District Office
Virgin Islands	New York District Office
Wake Island	San Francisco District Office

DISTRICT OFFICE LOCATIONS

Atlanta District Office

75 Piedmont Ave., N.E., Suite 1100
 Atlanta, GA 30335
 (404) 331-6093 (Voice)
 (404) 841-6091 (TDD)

Baltimore District Office

111 Market Pl., Suite 4000
 Baltimore, MD 21202
 (301) 962-3932 (Voice)
 (301) 922-6065 (TDD)

Birmingham District Office

1900 3rd Ave., North, Suite 101
 Birmingham, AL 35203-2397
 (205) 731-0082 (Voice)
 (205) 229-0095 (TDD)

Charlotte District Office

5500 Central Ave.
 Charlotte, NC 28212
 (704) 567-7100 (Voice)
 (704) 628-7173 (TDD)

Chicago District Office

536 South Clark St., Rm. 930-A
Chicago, IL 60605
(312) 353-2713 (Voice)
(312) 353-2421 (TDD)

Cleveland District Office

1375 Euclid Ave., Rm. 600
Cleveland, OH 44115-1808
(216) 522-2001 (Voice)
(216) 942-7296 (TDD)

Dallas District Office

8303 Elmbrook Dr.
Dallas, TX 75247
(214) 767-7015 (Voice)
(214) 729-7523 (TDD)

Denver District Office

1845 Sherman St., 2nd Fl.
Denver, CO 80203
(303) 866-1300 (Voice)
(303) 564-1950 (TDD)

Detroit District Office

477 Michigan Ave., Rm. 1540
Detroit, MI 48226-9704
(313) 226-7636 (Voice)
(313) 226-7599 (TDD)

Houston District Office

1919 Smith St., 7th Fl.
Houston, TX 77002
(713) 653-3377 (Voice)
(713) 522-3367 (TDD)

Indianapolis District Office

46 East Ohio St., Rm. 456
Indianapolis, IN 46204-1903
(317) 226-7212 (Voice)
(317) 331-5162 (TDD)

Los Angeles District Office

3660 Wilshire Blvd., 5th Fl.
Los Angeles, CA 90010
(213) 251-7278 (Voice)
(213) 251-7384 (TDD)

Memphis District Office

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Memphis, TN 38104
(901) 722-2617 (Voice)
(901) 222-2604 (TDD)

Miami District Office

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Miami, FL 33132-2491
(305) 536-4491 (Voice)
(305) 350-5721 (TDD)

Milwaukee District Office

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Milwaukee, WI 53203-2292
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(414) 362-1115 (TDD)

New Orleans District Office

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(504) 682-2958 (TDD)

New York District Office

90 Church St., Rm. 1501
New York, NY 10007
(212) 264-7161 (Voice)
(212) 264-7697 (TDD)

Philadelphia District Office

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Philadelphia, PA 19102
(215) 597-9350 (Voice)
(215) 597-5314 (TDD)

Phoenix District Office

4520 North Central Ave., Suite 300
Phoenix, AZ 85012-1848
(602) 640-5000 (Voice)
(602) 261-2692 (TDD)

San Antonio District Office

5410 Fredericksburg Rd., Suite 200
San Antonio, TX 78229-3555
(512) 229-4810 (Voice)
(512) 730-4858 (TDD)

San Francisco District Office

901 Market St., Suite 500
San Francisco, CA 94103
(415) 744-6500 (Voice)
(415) 484-7392 (TDD)

Seattle District Office

2815 Second Ave., Suite 500
Seattle, WA 98121
(206) 553-0968 (Voice)
(206) 399-1362 (TDD)

St. Louis District Office

625 North Euclid St., 5th Fl.
St. Louis, MO 63108
(314) 425-6585 (Voice)
(314) 279-6547 (TDD)

Washington Field Office

1400 L St., N.W., Suite 200
Washington, DC 20005
(202) 275-7377
(202) 275-7518

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