

## CHAPTER 7

# REGULATIONS RELATING TO PEOPLE WITH DISABILITIES

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### I. PURPOSE

- This chapter explains requirements relative to nondiscrimination on the basis of a disability.

#### A. Obligations of Miami-Dade County

- Miami-Dade County, as a sub-recipient of federal funds, must comply with the regulations for Section 504 of the Rehabilitation Act of 1973 regarding all programs, alterations, and construction that are federally funded. As a local government, it must comply with Title II of the Americans with Disabilities Act (ADA) and the revised Title II requirements effective March 15, 2011. As an employer, it must comply with Title I of the ADA and the 2008 ADA Amendments. Under those laws and regulations, all of Miami-Dade County programs and services must, when seen as a whole, be accessible to people with disabilities. Miami-Dade County is also prohibited from providing aid or assistance to any entity that discriminates on the basis of a disability.

#### B. Obligations of sub-recipients of Federal funds

- A sub-recipient of DHCD funding is a sub-recipient of federal funds and must comply with Section 504 of the Rehabilitation Act of 1973, as applicable. These regulations require that the sub-recipient's programs and services must, when seen as a whole, be accessible to people with disabilities. If a sub-recipient offers the same programs and services at several sites, or even at several locations in a single facility, it may not be necessary to make all sites or all parts of a single building accessible to persons with disabilities. If more than one site provides the same service to the same population in the same area, a sub-recipient may provide program access by offering, accessible services at only one site. If a sub-recipient offers classes on both the first floor and the second floor of a building, and there is no access to the second floor, it may provide program access by moving the second floor class to the first floor when there are persons with disabilities who want to take the class. The areas where people with disabilities will have to go to participate in the program or service must comply with the [Uniform Federal Accessibility Standards UFAS](#))

#### C. ADA obligations of an entity providing programs or services on behalf of Miami-Dade County

- A Miami-Dade County sub-recipient (e.g., a DHCD sub-recipient) has obligations under the ADA. If a sub-recipient offers programs or services on behalf of Miami-Dade County, then it stands in the County's shoes in providing those programs or services and

must do so in a manner that is in compliance with the County's ADA Title II obligations. Generally, those obligations are similar to Section 504.

**D. ADA Obligations of an entity that is a public accommodation**

- A sub-recipient that meets the ADA definition for a public accommodation must meet ADA Title III requirements that are in addition to Section 504 and ADA Title II requirements. Title III requires public accommodations to identify barriers in all of the public use areas of all of their facilities and to remove all barriers for which removal is readily achievable.

**E. ADA obligations of employers**

- Employers must comply with the requirements of Title I of the ADA, 2008 ADA Amendments and with the Miami-Dade County Equal Opportunity Ordinance.

**DHCD REQUIREMENTS**

F. All DHCD sub-recipients/contractors must provide the following:

- Contractors must complete a Disability Regulations Checklist for each of the contractor's current facilities. DHCD will provide the checklist and advise the contractor of the necessary date of receipt by DHCD as well as the date by which correction of areas of noncompliance identified in the checklist must be completed.
- The contractor's Affirmative Action Plan must include provisions for persons with disabilities and both the plan and the contractor's personnel policies must include a policy statement of nondiscrimination on the basis of a disability.
- A notice of Miami-County's policy of nondiscrimination, which is provided to contractors by DHCD, must be posted in the program, personnel, and employment areas.
- An Assurance of Compliance must be submitted annually or as otherwise required to DHCD. DHCD will provide the assurance form and advise contractors of the date by which it must be received by DHCD.

**III. PHYSICAL ACCESSIBILITY**

G. The CDBG, HOME, ESG, and other Federal funding regulations also require adherence to the two following regulations governing the accessibility of federally assisted buildings and facilities:

- Architectural Barriers Act of 1968, as amended (42 U.S.C. §§ 4151 et seq) -- requires that certain federally-funded buildings or facilities be designed, constructed, or altered to ensure accessibility to, and use by, physically disabled persons. Buildings or facilities allocated CDBG, HOME, ESG, and other Federal funds after December 11, 1995, that meet the definition of "residential structure" (as defined in 24 CFR 40.2) or the definition of "building" (as defined in 41 CFR 101-19.602(a) are subject to the Architectural Barriers Act and must comply with the Uniform Federal Accessibility Standards. The Uniform

Standards can be found in Appendix A to 24 CFR Part 40 for "residential structures" and in Appendix A to 41 CFR Part 101-19 for "general buildings."

- Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225) - provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The ADA also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing County facilities. Removal must be readily achievable for Title III entities, easily accomplishable and able to be carried out without much difficulty or expense. In County existing facilities barrier removal must be achieved.

#### **H. Section 504**

- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally assisted programs on the basis of disability. Section 504 imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and activities that receive federal funds.
- Under Section 504 sub-recipients are defined differently than under the HOME program. Section 504 sub-recipients include any entity that receives federal funding.
- For any recipient or sub-recipient that is principally involved in housing or social services, all of the activities of the agency, not just those directly receiving federal assistance, are covered under Section 504.
- Sub-contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of a sub-recipient.
- The ultimate beneficiary of the federal assistance is not subject to Section 504 requirements.
- Sub-recipients are not required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

#### **I. Removal of Physical Barriers**

- For new construction multifamily rental properties, five percent of the units in the project must be accessible to individuals with mobility impairments, and an additional two percent must be accessible to individuals with sensory impairments.

The Section 504 definition of substantial rehabilitation multifamily rental properties includes construction in a project with 15 or more units for which the rehabilitation costs will equal at least 75 percent of the replacement cost. In such

developments, five percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional two percent (but not less than one unit) must be accessible to individuals with sensory impairments.

- When rehabilitation less extensive than substantial rehabilitation is undertaken, alterations to every unit must make the unit accessible to the maximum extent feasible until five percent of the units in the project are fully accessible to people with mobility impairments. Alterations to common spaces must always make the project accessible to the maximum extent feasible.
- All accessible units must be equipped with necessary visual and sensory smoke detectors. Wiring to support the detectors must be installed.
- Structures not undergoing alteration do not have to be made accessible if the program as a whole can be made accessible through other means.
- For sales to homeowners, the purchaser can determine what accommodations, if any, are needed, and the costs of making those alterations are considered eligible program expenses.
- The standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.

#### **J. Provide Program Accessibility**

- Individuals with disabilities must be able to find out about, apply for, and participate in federally assisted programs or activities.
- Special communication systems may be needed for outreach and ongoing communication (e.g. Telecommunications Device for the Deaf (TDD); materials on tape or in Braille; accessible locations for activities and meetings).
- Policies and procedures must be non-discriminatory (e.g., housing providers cannot ask people with disabilities questions not asked of all applicants, screen individuals with handicap differently or assess an individual's ability to live independently).

#### **K. Make Employment Accessible**

- Employers must not discriminate.
- Employers must remove physical and administrative barriers to employment.
- Employers must make reasonable accommodations for individuals with known disabilities (e.g., job restructuring; providing readers or sign interpreters; making facilities accessible).

#### **L. Administrative Requirements**

- If sub-recipients have 15 or more employees, they must designate

a Section 504 Coordinator; and notify program participants and employees of non-discrimination policies.

- All sub-recipients must conduct self-evaluations of compliance with Section 504.

#### **M. Employment and Contracting**

- CDBG, HOME, ESG, and other Federal grants require that sub-recipients comply with the following regulations governing employment and contracting opportunities:
  - Equal Employment Opportunity, Executive Order 11246, as amended – prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding \$10,000. Implementing regulations may be found at 41 CFR Part 60.
  - Section 3 of the Housing and Urban Development Act of 1968 – requires that, to the greatest extent, feasible, opportunities for training and employment arising from CDBG will be provided to low-income persons residing in the program service area. In addition, to the greatest extent feasible, contracts for work (all types) to be performed in connection with CDBG will be awarded to business concerns which are located in or owned by persons residing in the program service area. Detailed information regarding Section 3 is located in the appendices.

#### **N. Contractor Compliance with Section 504**

- Assurance of compliance with Section 504 of the Rehabilitation Act of 1973, as amended.
- The undersigned (hereinafter called the sub-recipient) hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable Office of Revenue Sharing Regulation (31 CFR Part 51), and all guidelines and interpretations issued pursuant thereto.
- Pursuant to 31 CFR 51.55(b)(vii), the sub-recipient gives this assurance in consideration of and for the purpose of obtaining any and all federal funds extended by Miami-Dade County's Department of Housing and Community Development.
  - The sub-recipient assures that it does not aid or perpetuate discrimination on the basis of disability in providing any employment, benefit, or service to anyone. The sub-recipient assures that it has evaluated its programs and services, made any necessary nonstructural modifications to accommodate persons with disabilities, and has developed a plan to address any necessary structural changes to facilities. This assurance is binding on the sub-recipient, its successors, transferees, and assignees, and the person or persons whose signature appears below are authorized to

sign this assurance on behalf of the sub-recipient.

- Sub-recipients of federal funds must make all of the changes needed to meet the standards of UFAS that are necessary to make their programs and services, when seen as a whole, accessible to people with disabilities. Those changes must be made under any circumstances in new construction, but are exempted during alterations if "structurally impracticable" as defined in UFAS §§4.1.6(3); 3.5.
- The assurance obligates the sub-recipient for the period during which federal funds are extended to it by Miami-Dade County's Department of Housing and Community Development.

#### IV. HOME 504 REQUIREMENTS

##### O. EXAMPLES OF KEY DOCUMENTATION

- Fair Housing -
  - Applicant and beneficiary data by race, ethnicity, gender, and disability -
  - Participating Jurisdiction's (PJ) tenant-based rental assistance plan, if applicable; and
  - documentation of complaints and resolutions.
- Affirmative Marketing -
  - reports detailing affirmative marketing activities and identifying actions to undertake to correct any noncompliance with affirmative marketing policies
  - if corrective measures have been identified, actions taken on such measures must be documented to include numbers of persons, that respond directly to any affirmative marketing efforts; and
  - number of persons residing in or planning to reside in units, that became aware of units through local affirmative marketing efforts.
- Section 504 -
  - self evaluation forms, if required
  - list of interested persons consulted during the self-evaluation process
  - description of areas examined and any problems identified
  - description of modifications made and remedial steps taken documentation regarding any policies and procedures adopted regarding Section 504 grievances.
- Minority Business Enterprise/Women Business Enterprise -
  - MWBE plan for encouraging participation;
  - correspondence concerning contractor equal opportunity compliance and

- records of M/WBE participation in program.
- Section 3 -
  - handbooks, policies and procedures manuals,
  - resolutions and/or ordinances regarding equal opportunity employment
  - contractor certification of compliance with Section 3 Plan, or equivalent.

Note: all contracts must contain appropriate Section 3 provisions.

- Environmental Review -
  - Evidence Review Record for each project or aggregation of projects
- Lead-Based Paint -
  - evidence that notification was provided to prospective tenants and purchasers
  - records of inspections and testing
  - records of abatement activities, if any
  - records of complaints.
- Labor Standards - For each construction contract, the PJ should maintain a file with the following:
  - Copy of Wage Rate Request
  - Copy of Wage Rate, along with any additional classifications
  - Bid/Contract Documents with Labor Standards Provisions included
  - Contractor Eligibility Verification
  - Ten-day Call Verification
  - Pre-construction conference minutes/sign-in sheet
  - Payrolls, with evidence of their review
  - Notice of Start of Construction
  - Employee interviews
  - Evidence of violations and steps taken to resolve these
  - Final Wage Compliance Reports
  - Monthly employment utilization reports, where applicable.

**V. TITLE II REGULATIONS:**

- The Title II regulation covers public entities.
- Public entities include any State or local government and any of its departments, agencies, or other instrumentalities.
- All activities, services, and programs of public entities are covered, including activities of State legislatures and courts,

town meetings, police and fire departments, motor vehicle licensing, and employment.

- Unlike Section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, Title II extends to all the activities of State and local governments whether or not they receive Federal funds.
- Private entities that operate public accommodations, such as hotels, restaurants, theaters, retail stores, dry cleaners, doctor's offices, amusement parks, and bowling alleys, are not covered by Title II but are covered by Title III of the ADA and the Department's regulation implementing Title III.
- Public transportation services operated by State and local governments are covered by regulations of the Department of Transportation (DOT).
- DOT's regulations establish specific requirements for transportation vehicles and facilities, including a requirement that all new busses must be equipped to provide services to people who use wheelchairs.

#### Overview of Requirements for State and Local Governments

- May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability. For example, a city may not refuse to allow a person with epilepsy to use parks and recreational facilities.
- Must provide programs and services in an integrated setting, unless separate or different.
- Must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs or activities unless "necessary" for the provisions of the service, program or activity.
- Must not implement requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification, are also prohibited.
- Shall apply safety requirements that are necessary for the safe operation of the program in question, such as requirements for eligibility for drivers' licenses, may be imposed if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.
- Are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result. For example, a city office building would be required to make an exception to a rule prohibiting dogs in public areas in order to admit guide dogs or service animals assisting individuals with disabilities.
- Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

- May provide special benefits, beyond those required by the regulation, to individuals with disabilities.
- May not place special charges (surcharge) on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.
- Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.

#### Qualified Individuals with Disabilities

- Title II of the Americans with Disabilities Act provides comprehensive civil rights protections for qualified individuals with disabilities.
- An individual with a disability is a person who
  - Has a physical or mental impairment that substantially limits a major life activities, or
  - Has a record of such an impairment, or
  - Is regarded as having such an impairment.

Examples of physical or mental impairments include, but are not limited to such contagious and non-contagious diseases and conditions as: orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, past drug addiction, and past alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.
- Major life activities include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.

#### Qualified individuals

- A qualified individual with a disability is one who meets the essential eligibility requirements for the program or activity offered by a public entity.
- The essential eligibility requirements will depend on the type of service or activity involved.
- For some activities, such as State licensing programs, the ability to meet specific skill and performance requirements may be essential.

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

#### Program Access

- State and local governments should adhere to the following:
  - Must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible.
  - Need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.
  - Can provide the services, programs, and activities offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed, such as:
    - Relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building.
    - Providing an aide or personal assistant to enable an individual with a disability to obtain the service.
    - Providing benefits or services at an individual's home, or at an alternative accessible site.
- May not carry an individual with a disability as a method of providing program access, except in manifestly exceptional circumstances.
- Are not required to take any action that would result in a fundamental alteration to the nature of the service, program, or activity or an undue financial and administrative burdens. However, public entities must take any other action, if available, that would not result in a fundamental alteration or undue burdens but would ensure that individuals with disabilities receive the benefits or services.

#### Integrated Programs

- Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the Americans with Disabilities Act.
- Public entities may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.
- Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program.

For example, it would not be a violation for a city to offer recreational programs specially designed for children with

mobility impairments, but it would be a violation if the city refused to allow children with disabilities to participate in its other recreational programs.

- State and local governments may not require an individual with a disability to accept a special accommodation or benefit if the individual chooses not to accept it.

#### Communications

- State and local governments must ensure effective communication with individuals with disabilities.
- Where necessary to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids.
- Auxiliary aids include such services or devices as qualified interpreters, assertive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, Brailled materials, and large print materials.
- A public entity may not charge an individual with a disability for the use of an auxiliary aid. A public entity may ask for some type of security deposit to be sure auxiliary aids are returned.
- Telephone emergency services, including 911 services, must provide direct access to individuals with speech or hearing impairments.
- Public entities are not required to provide auxiliary aids that would result in a fundamental alteration in the nature of a service, program, or activity or an undue financial and administrative burdens. However, public entities must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or undue burdens.

#### New Construction and Alterations

- Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities.
- When a public entity undertakes alterations to an existing building, it must also ensure that the altered portions are accessible.
- The ADA does not require retrofitting of existing buildings to eliminate barriers, but does require that new buildings meet accessibility standards.
- Public entities not subject to Section 504 or the ABA, as of now, may choose between three technical standards for accessible design: The Uniform Federal Accessibility Standard (UFAS), established under the Architectural Barriers Act, the Americans with Disability Act Accessibility Guidelines (until March 2012), adopted by the Department of Justice for places of public accommodation and commercial facilities covered by Title III of the ADA or the 2010

ADA Standards for Accessible Design. Public entities subject to Section 504 or the ABA must comply with UFAS.

- The elevator exemption for small buildings under ADA Accessibility Guidelines would not apply to public entities covered by Title II in the State of Florida.

#### Enforcement

- Private parties may bring lawsuits to enforce their rights under Title II of the ADA. The remedies available are the same as those provided under section 504 of the Rehabilitation Act of 1973. A reasonable attorney's fee may be awarded to the prevailing party.
- Individuals may also file complaints with appropriate administrative agencies. The regulation designates eight Federal agencies to handle complaints filed under Title II.
- Complaints may also be filed with any Federal agency that provides financial assistance to the program in question, or with the Department of Justice, which will refer the complaint to the appropriate agency.

#### Complaints

- Any individual who believes that he or she is a victim of discrimination prohibited by the regulation may file a complaint. Complaints on behalf of classes of individuals are also permitted.
- Complaints should be in writing or on the complaint form used by the Federal Coordination and Compliance Section, must be signed by the complainant or an authorized representative, and should contain the complainant's name and address and describe the public entity's alleged discriminatory action.

Complaints may be sent to:

Federal Coordination and Compliance  
Section - NWB  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

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

#### Designated Agencies

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

- Department of Agriculture
  - Farming and the raising of livestock, including extension services
- Department of Education

- Education systems and institutions (other than health-related schools), and libraries
- Department of Health and Human Services
  - Schools and medicine, dentistry, nursing, and other health-related schools
  - Health care and social service providers and institutions, including grass-roots and community services organizations and programs; and
  - Preschool and daycare programs
- Department of Housing and Urban Development
  - State and local public housing agencies, and housing assistance and referral programs
- Department of Interior
  - Lands and natural resources, including parks and recreation
  - Water and waste management, environmental protection, energy, historic and cultural preservation, and museums
- Department of Justice
  - Public safety, law enforcement, and the administration of justice, including courts and correctional institutions
  - Commerce and industry, including banking and finance, consumer protection, and insurance; planning, development, and regulation (unless otherwise assigned)
  - State and local government support services; and all other government functions not assigned to other designated agencies
- Department of Labor
  - Labor and the work force
- Department of Transportation
  - Transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing

#### Technical Assistance

- The ADA requires that the Federal agencies responsible for issuing ADA regulations provide technical assistance.
- Technical assistance is the dissemination of information (either directly by the Department or through grants and contracts) to assist the public, including individuals protected by the ADA and entities covered by the ADA, in understanding the new law.
- Methods of providing information include, for example; audio-visual materials, pamphlets, manuals, electronic bulletin boards, checklists, and training.
- The Department issued for public comment on December 5, 1990, a government-wide plan for the provision of technical assistance.

- The Department's efforts focus on raising public awareness of the ADA by providing:
  - Fact sheets and pamphlets in accessible formats
  - Speakers for workshops, seminars, classes, and conferences
  - An ADA telephone information line, and
  - Access to ADA documents through an electronic bulletin board for users of personal computers.
- The Department has established a comprehensive program of technical assistance relating to public accommodations and State and local governments.
- Grants will be awarded for projects to inform individuals with disabilities and covered entities about their rights and responsibilities under the ADA and to facilitate voluntary compliance.
- The Department issued technical assistance manuals in 1993 for individuals or entities with rights or duties under the ADA.
- For additional information; contact:
  - U.S. Department of Justice
  - 950 Pennsylvania Avenue, N.W.
  - Civil Rights Division
  - Disability Rights Section - NYA
  - Washington, D.C. 20530
  - 800-514-0301 (voice)
  - 800-514-0383 (TTY)

## VI. TITLE III REGULATIONS

- Title III regulations covers public accommodations (i.e., private entities that own, operate, lease, or lease to places of public accommodation).
- Places of public accommodation include over five million private establishments, such as restaurants, hotels, theaters, convention centers, retail stores, shopping centers, dry cleaners, laundromats, pharmacies, doctors' offices, hospitals, museums, libraries, parks, zoos, amusement parks, private schools, day care centers, health spas, and bowling alleys
- Commercial facilities, and
- Commercial facilities are nonresidential facilities, including office buildings, factories, and warehouses whose operations affect commerce.
- Private entities that offer certain examinations and courses related to educational and occupational certification.
- Entities controlled by religious organizations, including places of worship, are not covered.
- Private clubs are not covered, except to the extent that the facilities of the private club are made available to customers or

patrons of a place of public accommodation.

- State and local governments are not covered by the Title III. regulation, but rather by the Department of Justice's Title II regulation.

#### Overview of Requirements

Public accommodations must:

- Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.
- Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities, an equal opportunity to enjoy the goods and services of a place of public accommodation.
- Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the goods and services provided.
- Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.
- Remove architectural and structural communication barriers in existing facilities where readily achievable.
- Provide readily achievable alternative measures when removal of barriers is not readily achievable.
- Provide equivalent transportation services and purchase accessible vehicles in certain circumstances.
- Maintain accessible features of facilities and equipment.
- If not subject to Section 504 or the ABA, design and construct new facilities and, when undertaking alterations, alter existing facilities in accordance with the Americans with Disabilities Act Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board and incorporated in the final Department of Justice Title III regulation and the 2010 ADA Standards for Accessible design (Compliance with the 2010 Standards for Accessible Design is permitted as of September 15, 2010, but not required until March 15, 2012. If subject to Section 504 or the ABA, UFAS is the applicable design standard.
- A public accommodation is not required to provide personal devices such as wheelchairs; individually prescribed devices (e.g., prescription eyeglasses or hearing aids); or services of a personal nature including assistance in eating, toileting, or dressing.
- A public accommodation may not discriminate against an individual or entity because of the known disability of a person with whom the individual or entity is known to associate.
- Commercial facilities are only subject to the requirement that new construction and alterations conform to the ADA Accessibility Guidelines.

The other requirements applicable to public accommodations listed above do not apply to commercial facilities.

- Private entities offering certain examinations or courses (i.e., those related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes) must offer them in an accessible place and manner or offer alternative accessible arrangements.

#### Individuals with Disabilities

- The Americans with Disabilities Act provides comprehensive civil rights protections for individuals with disabilities.
- An individual with a disability is a person who:
  - Has a physical or mental impairment that substantially limits one or more major life activities, or
  - Has a record of such an impairment, or
  - Is regarded as having such an impairment
- Examples of physical or mental impairments include, but are not limited to, such contagious and non-contagious diseases and conditions or orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, former drug addiction, and former alcoholism. Homosexuality and bisexuality are not considered physical or mental impairments under the ADA.
- Major life activities include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.

#### Eligibility for Goods and Services

- In providing goods and services, a public accommodation may not use eligibility requirements that exclude or segregate individuals with disabilities, unless the requirements are necessary for the operation of the public accommodation. For example, excluding individuals with cerebral palsy from a movie theater or restricting individuals with Down's Syndrome to only certain areas of a restaurant would violate the regulation.
- Requirements that tend to screen out individuals with disabilities, such as requiring a blind person to produce a driver's license as the sole means of identification for cashing a check, are also prohibited.
- Safety requirements may be imposed only if they are necessary for the safe operation of a place of public accommodation. They must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities. For example, an amusement park may impose height requirements rides when required for safety.

- Extra charges (surcharges) may not be imposed on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as removing barriers or providing qualified interpreters.

#### Modifications in Policies, Practices, and Procedures

- A public accommodation must make reasonable modifications in its policies, practices, and procedures in order to accommodate individuals with disabilities.
- A modification is not required if it would fundamentally alter the goods, services, or operations of the public accommodation. For example, a department store may need to modify a policy of only permitting one person at a time in a dressing room if an individual with mental retardation needs the assistance of a companion in dressing.
- Modifications in existing practices generally must be made to permit the use of service animals (dogs are recognized as service animals and under specific conditions miniature horses may be used).
- Specialists are not required to provide services outside of their legitimate areas of specialization. For example, a doctor who specializes exclusively in burn treatment may refer an individual with a disability, who is not seeking burn treatment, to another provider. A burn specialist, however, could not refuse to provide burn treatment to, for example, an individual with HIV disease.

#### Auxiliary Aids

- A public accommodation must provide auxiliary aids and services when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments.
- Auxiliary aids include such services or devices as qualified interpreters, assisted listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, brailled materials, and large print materials.
- The auxiliary aid requirement is flexible. For example, a brailled menu is not required, if waiters are instructed to read the menu to blind customers.
- Auxiliary aids that would result in an undue burden, (i.e., significant difficulty or expense) or in a fundamental alteration in the nature of the goods or services are not required by the regulation. However, a public accommodation must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or an undue burden.

#### Existing Facilities: Removal of Barriers

- Physical barriers to entering and using existing facilities must be removed when readily achievable.
- Readily achievable means easily accomplishable and able to be carried

out without much difficulty or expense.

- What is readily achievable will be determined on a case-by-case basis in light of the resources available.
- The regulation does not require the rearrangement of temporary or movable structures, such as furniture, equipment, and display racks to the extent that it would result in a significant loss of selling or serving space.
- Legitimate safety requirements may be considered in determining what is readily achievable so long as they are based on actual risks and are necessary for safe operation.
- Examples of barrier removal measures include:
  - Installing ramps
  - Making curb cuts at sidewalks and entrances
  - Rearranging tables, chairs, vending machines, display racks, and other furniture
  - Widening doorways
  - Installing grab bars in toilet stalls, and
  - Adding raised letters or braille to elevator control buttons
- First priority should be given to measures that will enable individuals with disabilities to get in the front door, followed by measures to provide access to areas providing goods and services.
- Barrier removal measures must comply, when readily achievable, with the alterations requirements of the ADA Accessibility Guidelines or the 2010 ADA Standards for Accessible design (Compliance with the 2010 Standards for Accessible Design is permitted as of September 15, 2010, but not required until March 15, 2012).
- If compliance with the standards is not readily achievable, other safe, readily achievable measures must be taken, such as installation of a slightly narrower door than would be required by the Guidelines.

#### Existing Facilities: Alternatives to Barrier Removal

- The ADA requires the removal of physical barriers, such as stairs, if it is readily achievable. However, if removal is not readily achievable, alternative steps must be taken to make goods and services accessible.
- Examples of alternative measures include:
  - Providing goods and services at the door, sidewalk, or curb
  - Providing home delivery
  - Retrieving merchandise from inaccessible shelves or racks
  - Relocating activities to accessible locations
- Extra charges may not be imposed on individuals with disabilities to cover the costs of measures used as alternatives to barrier removal. For example, a restaurant may not charge a wheelchair user extra for home delivery when it is provided as the alternative to barrier removal.

## New Construction

- All newly constructed places of public accommodation and commercial facilities must be accessible to individuals with disabilities to the extent that it is not structurally impracticable.
- The new construction requirements apply to any facility occupied after January 26, 1993, for which the last application for a building permit or permit extension is certified as completed after January 26, 1992.
- Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features (e.g., marshland that requires construction on stilts).
- The architectural standards for accessibility in new construction are contained in the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board, an independent Federal agency and the 2010 ADA Standards for Accessible Design (Compliance with the 2010 Standards for Accessible Design is permitted as of September 15, 2010, but not required until March 15, 2012.)
- These standards are incorporated in the final Department of Justice Title III regulation.
- Elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of health care provider, or station used for public transportation.

## Alterations

- Alterations after January 26, 1992, to existing places of public accommodation and commercial facilities must be accessible to the maximum extent feasible. Until March 15, 2012, the ADAAG and the newer ADA standards referred to as the 2010 ADA Standards for Accessible Design may be used however, after March 15, 2012 only the newer standard may be used.
- The architectural standards for accessibility in alterations are contained in the ADA Accessibility Guidelines (ADAAG) Until March 15, 2012, the ADAAG and the newer ADA standards referred to as the 2010 ADA Standards for Accessible Design may be used however, after March 15, 2012 only the newer standard may be used.
- An alteration is a change that affects usability of a facility. For example, if during remodeling, renovation, or restoration, a doorway is being relocated, the new doorway must be wide enough to meet the requirements of the ADA Accessibility Guidelines and after March 15, 2012, the 2010 ADA standards for Accessible Design.
- When alterations are made to a primary function area, such as the lobby or work areas of a bank, an accessible path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving that area, must be made accessible to the extent that the added accessibility costs are not disproportionate to the overall cost of the original alteration.

- ❑ Alterations to windows, hardware, controls, electrical outlets, and signage in primary function areas should not trigger the path of travel requirement.
- ❑ The added accessibility costs are disproportionate if they exceed 20 percent of the original alteration.
- ❑ Elevators are not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, shopping mall, professional office of a health care provider, or station used for public transportation. See comment above regarding my suggestion to omit selected, specific technical requirements from the accessibility standards.

#### Overview

Americans with Disabilities Act Accessibility Guidelines for New Construction and Alterations and the 2010 ADA Standards for Accessible Design.

- ❑ If not subject to Section 504 or the ABA, New construction and alterations must be accessible in compliance with the ADA Accessibility Guidelines and the 2010 ADA Standards for Accessible design may be used however, after march of 2012 only the newer standard may be used. If subject to Section 504 or the ABA, UFAS is the applicable standard.
- ❑ The Guidelines contain general design (technical) standards for building and site elements, such as parking, accessible routes, ramps, stairs, elevators, doors, entrances, drinking fountains, bathrooms, controls and operating mechanisms, storage areas, alarms, signage, telephones, fixed seating and tables, assembly areas, automated teller machines, and dressing rooms. They also have specific technical standards for restaurants, medical care facilities, mercantile facilities, libraries, and` transient lodging (such as hotels and shelters).
- ❑ The standards also contain scoping requirements for various elements (i.e., it specifies how many, and under what circumstances, accessibility features must be incorporated).
- ❑ The following are examples of scoping requirements in new construction:
  - At least 50 percent of all public entrances must be accessible. In addition, there must be accessible entrances to enclosed parking, pedestrian tunnels, and elevated walkways.
  - An accessible route must connect accessible public transportation stops, parking spaces, passenger loading zones, and public streets or sidewalks to all accessible features and spaces within a building.
  - Every public and common use bathroom must be accessible. Only one stall must be accessible, unless there are six or more stalls, in which case two stalls must be accessible (one of which must be of an alternate, narrow-style design).
  - Each floor in a building without a supervised sprinkler system

must contain an area of rescue assistance (i.e., an area with direct access to an exit stairway where people who are unable to use stairs may await assistance during an emergency evacuation).

- One telecommunication Device for the deaf (TDD) must be provided inside any building that has four or more public pay telephones, counting both interior and exterior phones. In addition, one TDD must be provided whenever there is an interior public pay phone in a stadium or arena; convention center; hotel with a convention center; covered shopping mall; or hospital emergency, recovery, or waiting room.
- One accessible public phone must be provided for each floor, unless the floor has two or more banks of phones, in which case there must be one accessible phone for each bank.
- Fixed seating assembly areas that accommodate 50 or more people or have audio-amplification systems must have a permanently installed assisted listening system.
- Dispersal of wheelchair seating in theaters is required where there are more than 300 seats. In addition, at least one percent of all fixed seats must be aisle seats without armrests (or with removable armrests). Fixed seating for companions must be located adjacent to each wheelchair location.
- Where automated teller machines are provided, at least one must be accessible.
- Five percent of fitting and dressing rooms (but never less than one) must be accessible.

□ The following are examples of specific scoping requirements for new construction of special types of facilities, such as restaurants, medical care facilities, mercantile establishments, libraries, and hotels:

- In restaurants, generally all dining areas and five percent of fixed tables (but not less than one) must be accessible.
- In medical care facilities, all public and common use areas must be accessible. In general-purpose hospitals and in psychiatric and detoxification facilities, ten percent of patient bedrooms and toilets must be accessible. The required percentage is 100 percent for special facilities treating conditions that affect mobility, and 50 percent for long-term care facilities and nursing homes.
- In mercantile establishments, a least one of each type of counter containing a cash register and at least one of each design of checkout aisle must be accessible. In some cases, additional checkout aisles are required to be accessible (i.e., from 20 to 40 percent) depending on the number of checkout aisles and the size of the facility.
- In libraries, all public areas must be accessible. In addition, five percent of fixed tables or study carrels (or at least one) must be accessible. At least one lane at the

checkout area and aisle between card catalogs, magazine displays, and stacks must be accessible.

- In hotels, four percent of the first 100 rooms and approximately two percent of rooms in excess of 100 must be accessible to persons with hearing impairments (i.e., contain visual alarms, visual notification devices, volume-control telephones, and an accessible electrical outlet for a 'TDD) and to persons with mobility impairments. Moreover, an identical percentage of additional rooms must be accessible to persons with hearing impairment.
- Technical and scoping requirements for alterations are sometimes less stringent than those for new construction. For example, when compliance with the new construction requirements would be technically infeasible, one accessible unisex bathroom per floor is acceptable.
- Certain examinations or courses offered by a private entity (i.e., those that are related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes) must either be given in a place and manner accessible to persons with disabilities, or be made accessible through alternative means.

☐ In order to provide an examination in an accessible place and manner, a private entity must:

- Assure that the examination measures what it is intended to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills.
- Modify the examination format when necessary (e.g., permit additional time).
- Provide auxiliary aids (e.g., taped exams, interpreters, large print answer sheets, or qualified readers), unless they would fundamentally alter the measurement of the skills or knowledge that the examination is intended to test or would result in an undue burden.
- Offer any modified examination at an equally convenient location, as often, and in as timely a manner as are other examinations.
- Administer examinations in a facility that is accessible or provide alternative comparable arrangements, such as providing the examination at an individual's home with a proctor.

☐ In order to provide a course in an accessible place and manner, a private entity may need to:

- Modify the course format or requirements (e.g., permit additional time for completion of the course).
- Provide auxiliary aids, unless a fundamental alteration or undue burden would result.
- Administer the course in a facility that is accessible or

provide alternative comparable arrangements, such as provision of the course through video tape, audio cassettes, or prepared notes.

#### Enforcement of the ADA and its Regulations

- Private parties may bring lawsuits to obtain court orders to stop discrimination. No monetary damages will be available in such suits. A reasonable attorney's fee, however, may be awarded.
- Individuals may also file complaints with the Attorney General who is authorized to bring lawsuits in cases of general public importance or where a pattern or practice of discrimination is alleged.
- In suits brought by the Attorney General, monetary damages (not including punitive damages) and civil penalties may be awarded. Civil penalties may not exceed \$55,000 for a first violation or \$110,000 for any subsequent violation.

#### Technical Assistance

- The ADA requires that the Federal agencies responsible for issuing ADA regulations provide technical assistance.
- Technical assistance is the dissemination of information (either directly by the Department or through grants and contracts) to assist the public, including individuals protected by the ADA and entities covered by the ADA, in understanding the law.
- Methods of providing information include, for example, audio-visual materials, pamphlets, manuals, electronic bulletin boards, checklists, and training.
- The Department's efforts focus on raising public awareness of the ADA by providing:
  - Fact sheets and pamphlets in accessible formats
  - Speakers for workshops, seminars, classes, and conferences
  - An ADA telephone information line, and
  - Access to ADA Documents through an electronic bulletin board for users of personal computers
- The Department has established a comprehensive program of technical assistance relating to public accommodations and State and local governments.
- Grants will be awarded for projects to inform individuals with disabilities and covered entities about their rights and responsibilities under the ADA and to facilitate voluntary compliance.
- The Department issued technical assistance manuals in January 1993 for individuals or entities with rights or duties under the ADA.
- For additional information, contact:

U.S. Department of Justice

950 Pennsylvania Avenue, N.W.  
Civil Rights Division  
Disability Rights Section - NYA  
Washington, D.C. 20530

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