

ADA: Definition & Scope

The Americans with Disabilities Act of 1990



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Americans with Disabilities Act

AMERICANS WITH DISABILITIES ACT of 1990

S. 933 [P.L.101-336]

One Hundred First Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-third day of January, one thousand nine hundred and ninety

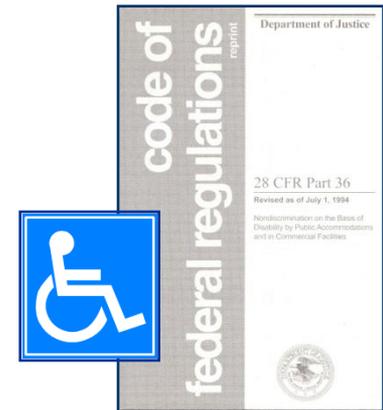
An Act

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Americans with Disabilities Act

We will look at:

- ❖ Why it exists?
- ❖ What it accomplishes?
- ❖ Who is required to comply?
- ❖ 5 Titles or Parts
- ❖ Requirements for State and Local Governments
- ❖ Program Accessibility



Barriers

The ADA: Why It Exists?

- ❖ Barriers to employment, transportation, public accommodations, public services, and telecommunications have imposed staggering economic and social costs on American society.
- ❖ These barriers have undermined our well-intentioned efforts to educate, rehabilitate, and employ individuals with disabilities.



The ADA: Why It Exists?

By breaking down these barriers, society will:

- ❖ benefit from the skills and talents of individuals with disabilities,
- ❖ gain from their increased purchasing power and ability to use it, and
- ❖ lead to fuller, more productive lives for all Americans.



What It Accomplishes?

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

Who Is Required to Comply?

Everyone

Five Titles or Parts

Title I - Employment

Title II - Public Services

**Title III - Public Accommodations and Services
Operated by Private Entities**

Title IV - Telecommunications

Title V - Miscellaneous Provisions



Title I - Employment

- ❖ **Title I** of the ADA prohibits discrimination against persons with disabilities in employment
 - by businesses having 15 or more employees, or
 - by State and local governments
- ❖ Enforced by: Equal Employment Opportunity Commission (EEOC) (for private employers)

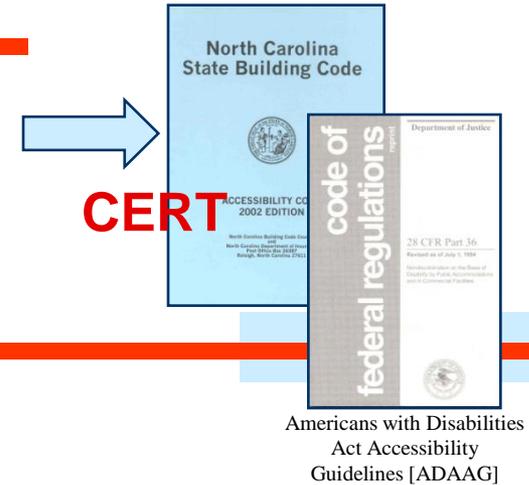
Title II - Public Services

- ❖ **Title II** of the ADA prohibits discrimination against or prohibits excluding persons from participating in State and local government services, programs, and activities on the basis of any disability.

SEC. 202. DISCRIMINATION. Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, 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.

- ❖ That means state and local entities are required to provide **equal opportunity to participate** in programs, services and activities

Title III - Public Accommodations



Title III:

- ❖ Prohibits discrimination on the basis of disability by public accommodations and
- ❖ Requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

- Title II + III construction requirements are the same except that the elevator exemption for 2-story buildings does not apply to title II

Public Accommodation:

- ❖ A place of public accommodation is a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories :

- (1) A place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor (typically a Bed + Breakfast inn with < 5 rooms);



Public Accommodation:

❖ A place of public accommodation is a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories :

- (2) An establishment serving food or drink; 
- (3) A place of exhibition or entertainment; 
- (4) A place of public gathering; 
- (5) A sales or rental establishment; 
- (6) An office, professional office of a health care provider, hospital, or other service establishment; 

Public Accommodation:

❖ A place of public accommodation is a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories :



- (7) A station used for specified public transportation;
- (8) A place of public display or collection;
- (9) A park, zoo, amusement park, or other place of recreation;
- (10) A place of education;
- (11) A social service center establishment; and
- (12) A place of exercise or recreation.



Title IV - Telecommunications



Title IV mandates:

- ❖ That telephone companies offer TTY/telephone relay services to enable individuals who use TTY's.

TTY = teletypewriter, also known as a TDD
TDD = Telecommunication Device for the Deaf

- ❖ That any TV public service announcement that is produced or funded in whole or in part by any agency or instrumentality of the Federal Government shall include closed captioning.

Title V - Misc Provisions

❖ Covers:

- Construction
- State immunity
- Prohibition against retaliation + coercion
- Regulations by Architectural Transportation and Barriers Compliance Board
- Attorney's fees
- Technical assistance
- Federal wilderness areas
- Transvestites
- Coverage of Congress and legislative branch agencies
- Illegal drug use
- Definitions
- Amendments to the Rehabilitation Act
- Alternative means of dispute resolution
- Severability

The Access Board

- ❖ **The Architectural Transportation and Barriers Compliance Board (the ATBCB):**
 - a.k.a. The Access Board
 - agency that formulates the draft regulations that become the Americans with Disabilities Act Accessibility Guidelines (previous + future)
 - the Guidelines remain just that - guidelines - until adopted by the US Department of Justice
 - online at: www.access-board.gov

Great resource for rationale behind requirement.

State and Local Governments

When did the requirements for State and local governments become effective?

January 26, 1992

❖ 5 Action Steps

- Designation of an ADA coordinator
- Provide notice of ADA requirements
- Establish a grievance procedure
- Conduct self-evaluation of policies and procedures
- Develop a transition plan

Establish a grievance procedure

- ❖ A public entity that employs 50 or more persons shall:
 - designate at least one employee as **ADA coordinator**
 - to comply with and fulfill responsibilities under title II
 - investigate complaints
 - make available the name, office address, and telephone number of the designated employee.
 - adopt and publish grievance procedures
 - grievance procedures must provide prompt and equitable resolution of complaints alleging any action that would be prohibited by title II

A state is not immune from suit under the ADA.

Complaints to Fed Agency

- ❖ A person or a specific class of individuals or their representative may file a complaint alleging discrimination on the basis of disability
 - a complaint must be in writing
 - it should contain the name and address of the individual or the representative filing the complaint
 - the complaint should describe the public entity's alleged discriminatory action in sufficient detail to inform the Federal agency of the nature and date of the alleged violation
 - must be filed within 180 days of the date of the alleged act(s) of discrimination, unless the time for filing is extended by the Federal agency for good cause

Self-Evaluation Procedure

Plan

- 1. Plan for compliance
- 2. Conduct the self-evaluation
- 3. Implement the modifications

Conduct

Implement

Conduct self-evaluation of policies and procedures

- ❖ The self-evaluation is an assessment of a public entity's current policies and practices. It identifies and corrects those policies and practices that are inconsistent with title II's requirements. It:
 - was required to be complete by January 26, 1993
 - was required to be retained for 3 years by a public entity that employs 50 or more employees
 - was not required to be retained by other public entities but was encouraged to be retained because the documents are evidence of a public entity's good faith efforts to comply with title II's requirements

Develop a transition plan

- A list of the barriers that limit accessibility of programs, activities or services
- A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible
- The schedule for taking the necessary steps to achieve compliance.
 - If the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period; and
- The name of the official responsible for the plan's implementation.

Establishing Priorities

- ❖ **Begin with facilities and programs used most often and/or by the largest number of people**

STRUCTURAL

- Parking + entrance
- Path of travel
- Toilets
- Drinking fountains
- Telephones
- Other items

Do in order of
priority

1
2
3
4
5
6

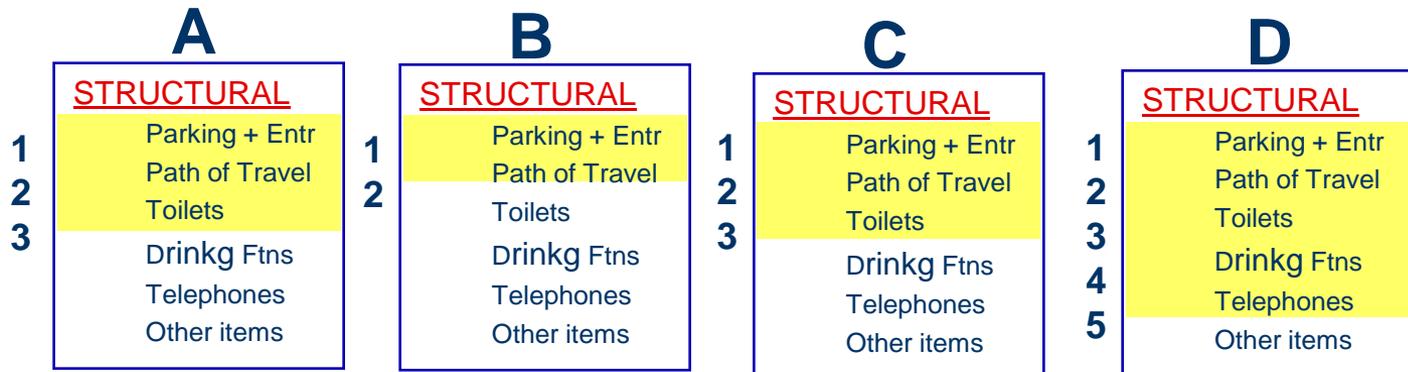


PROGRAM ACCESS

- Public services
- Public meetings
- Recreational facilities
- Classes
- Sponsored trips
- Historic preservation programs

Establishing Priorities

- ❖ **Begin with facilities and programs used most often and/or by the largest number of people**



- Phased implementation requires coordination of barrier removal and program access location

Establishing Priorities

- Physical changes to a building are required only when there is no other feasible way to make the program accessible.
 - *Can move to another location*
- When choosing a method of providing program access, priority must be given to the one that results in the most integrated setting appropriate to encourage interaction among all users

Time Period for Compliance

- ❖ **Barrier removal is an on-going obligation requiring**
 - 1. Commitments from entity leaders
 - 2. Coordination of compliance activities
 - 3. Involvement of people with disabilities
 - 4. Institutionalization of compliance procedures

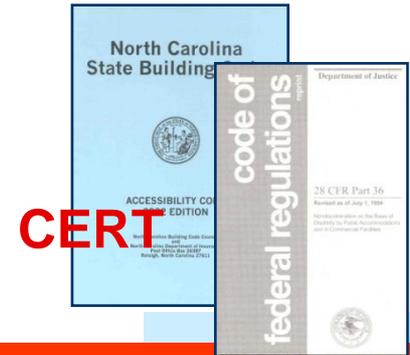
The original time periods for compliance were:

Evaluation deadline: 1/26/93

Compliance deadline: 1/26/95

14 yrs
ago!

Existing Facilities



Americans with Disabilities
Act Accessibility
Guidelines [ADAAG]

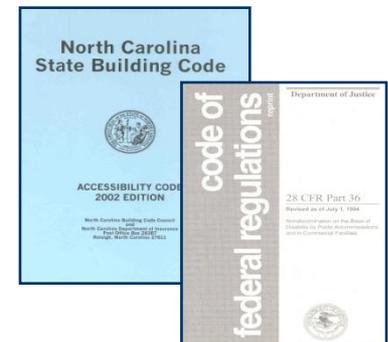
- ❖ When State or local governments design and construct new facilities, or alter existing facilities, they must do so in accordance with standards for accessible design adopted under the ADA (ADAAG).

Includes alteration of donated existing bldgs; includes all city/cty bldgs

- ❖ Enforcement:
 - The U.S. Department of Justice (DOJ) enforces the provisions of title II relating to non - public transportation services
 - The U.S. Department of Education enforces the provisions of title II relating to public education.

Alterations + Additions

- ❖ If an alteration to a business building or facility is begun after January 26, 1992:
 - the areas or elements that are altered must be readily accessible to and usable by individuals with disabilities
 - in accordance with the ADA Standards for Accessible Design [ADAAG] →
 - to the maximum extent feasible



Americans with Disabilities Act Accessibility Guidelines [ADAAG]

This concept is referred to as “disproportionality” – 20% of the alteration budget spent on upgrading accessibility

Alterations + Additions

- ❖ Additions to an existing building are subject to the **Path of Travel** requirements in the ADA Standards for Accessible Design.

- If the addition does not have an accessible entrance, the path of travel obligation may require an accessible route to the addition through the existing building.
- To the extent that spaces or elements are newly constructed as part of an addition, they must meet the requirements for new construction.

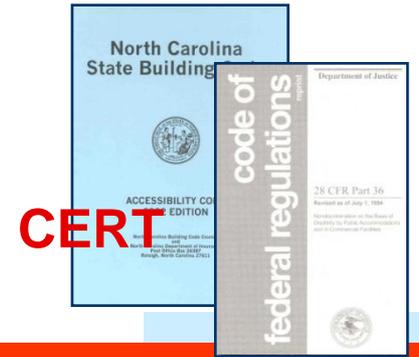
	<u>STRUCTURAL</u>
1	
2	Parking + Entr
3	Path of Travel
4	Toilets
5	Drinkg Ftns
6	Telephones
	Other items

New constr (EVEN IN EXISTING BLDGS) = new constr



Americans with Disabilities Act Accessibility Guidelines [ADAAG]

Existing Facilities

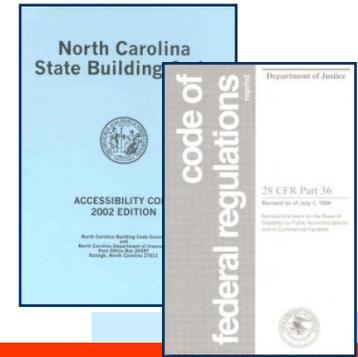


What changes must a public entity make to its existing facilities to make them accessible?

1. A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible.
2. A State or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities.

This standard, known as “**Program Accessibility**”, applies to facilities of a public entity that existed on Jan 26, 1992.

Existing Facilities



Americans with Disabilities
Act Accessibility
Guidelines [ADAAG]

- ❖ Public entities do not necessarily have to make each of their existing facilities accessible.
- ❖ **Program Accessibility** may be provided by a number of methods including:
 - alteration of existing facilities,
 - acquisition or construction of additional facilities,
 - relocation of a service or program to an accessible facility,
 - or provision of services at alternate accessible sites.

Program Accessibility

- ❖ State and local governments must operate their programs so that, when viewed in their entirety, they are **readily accessible to** and **usable by people with disabilities**.
- ❖ They must provide programs and services:
 - in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity, and
 - must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their programs or services.

Program Accessibility

- ❖ All programs, services, and activities of State or local governments are covered.
 - public education and social service programs
 - State legislatures and courts, town meetings,
 - police and fire departments,
 - motor vehicle licensing, employment services, and
 - public transportation programs.

Includes special purpose districts, or other instrumentalities - no exceptions

Program Accessibility

- ❖ State and local governments must also make reasonable modifications in **policies, practices, and procedures** and provide effective communication through the use of auxiliary aids and services when necessary to ensure **equal access** for individuals with disabilities, **unless** an undue burden or fundamental alteration would result.

What do we mean by “auxiliary aids and services”?

Auxiliary aids and services



Can be any of the following, or more:

- qualified interpreters
- other effective methods of making aurally delivered materials available to individuals with hearing impairments
- qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments
- acquisition or modification of equipment or devices



Hardship Exemptions

- ❖ A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens.
 - This determination can only be made by the head of the public entity or his or her designee
 - Must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program.

Accessibility Myths



- ❖ Accessibility applies only to public areas

MYTH

▸ Applies to:

- Public Areas
- Common use areas
- Employee work areas

MYTH

Accessibility does not apply to historic buildings - Yes it does

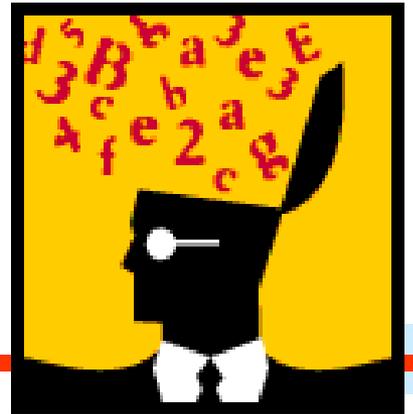
- ❖ Accessibility applies only to required items

MYTH

- Applies to anything “provided”, whether required or not



QUESTIONS?



- ❖ Internet Reference: www.ada.gov
- ❖ How to reach me for further questions:
 - PHONE 919-661-5880 x247
 - FAX 919-662-4414
 - E-MAIL Laurel.Wright@ncdoi.org
 - WEBSITE www.ncdoi/osfm.com
- ❖ Please include **name, company/dept/jurisdiction,** and **phone number** on e-mails. If I am out of the office or in meetings, an answer may take a day or so - tell me if you have a deadline.

