

APPLICATION: {35.102}

All, Services Programs and Activities
Provided or made available by public entities

SELF-EVALUATION {35.105}

By January 26, 1993
Services, policies, practices and effects thereof
Public participation and comment
If 50 + employees, keep on file 3 years with updates

NOTICE {35.106}

Notify interested parties of:
Provisions of ADA
Application to services, programs and activities
Protections against discrimination given by ADA
Communicate according to {35.160}

DESIGNATED, RESPONSIBLE EMPLOYEE {35.107}

Required if 50+ employees
Responsibilities:
Coordinate efforts
Investigate complaints alleging noncompliance

COMPLAINT PROCEDURES {35.107}

Required if 50+ employees
Adopt and publish grievance procedures for
prompt and equitable resolution of complaints

GENERAL PROHIBITION AGAINST DISCRIMINATION {35.130}

“No qualified individual with a disability shall, on the basis of 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 public entity.”

Directly, or
Through contracts, licensing or other arrangements
Deny participation, aid, benefit or service
Equal to that afforded others
As effective as afforded others
Provide **different or separate** aids, benefits or
services unless:

DIFFERENT OR SEPARATE PROHIBITED {35.130}

Unless necessary to provide aids, benefits, or
services as effective as provided to others
When individuals are not allowed to participate in
non-separate programs, services or activities

ADDITIONAL PROHIBITIONS {35.130}

Provide significant assistance to an agency,
organization, or person that discriminates
Deny participation on planning or advisory boards
Otherwise limit a qualified individual with a
disability in the enjoyment of any right,
privilege, advantage, or opportunity enjoyed by
others receiving the aid, benefit, or service.

ADDITIONAL PROHIBITIONS {35.130}

Directly or through contracts or other arrangements
Utilize criteria or methods of administration:
That have the effect of discrimination
That have the purpose or effect of defeating or
substantially impairing programs
That perpetuate the discrimination of another
public entity subject to common control

ADDITIONAL PROHIBITIONS {35.130}

In determining facility sites, make selections
That have the effect of excluding, denying
benefits or otherwise discriminating
That have the purpose or effect of defeating or
substantially impairing programs

ADDITIONAL PROHIBITIONS {35.130}

In procurement, use criteria that discriminate
Administer a licensing or certification program
 That discriminates
 That establishes requirements that discriminate
Impose or apply eligibility criteria that screen
 out or tend to screen out unless such criteria
 are necessary for provision of the program

FUNDAMENTALLY ALTER THE NATURE OF... {35.130}

“A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”

NOT REQUIRED OR PROHIBITED {35.130}

Provision of additional benefits, programs or services beyond those required by ADA

INTEGRATED SETTING {35.130}

“A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”

FORCED ACCEPTANCE {35.130}

“Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.”

WITHHOLDING OF TREATMENT NOT AUTHORIZED {35.130}

“Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.”

SURCHARGES FOR REQUIRED PROVISIONS {35.130}

 Surcharges on particular individuals with disabilities to cover costs of measures required by the ADA are not allowed.

ASSOCIATION (ROOMMATE) CLAUSE {35.130}

 “A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.”

ILLEGAL USE OF DRUGS {35.131}

 Current use not protected
 Protections extended to past users who:
 Have successfully completed rehabilitation or
 Are currently in rehabilitation or
 Are erroneously regarded as illegal drug users

DRUG REHABILITATION {35.131}

 Cannot be denied due to current drug use unless use continues during rehabilitation program
 Reasonable policies allowed {incl. drug testing} to ensure no current use by former users
 Drug testing not encouraged, prohibited, restricted, or authorized by ADA

SMOKING {35.132}

 Restrictions on smoking in transportation not prohibited or imposed by ADA

MAINTENANCE OF ACCESSIBLE FEATURES {35.133}

 Features of facilities and equipment required to be “readily accessible to and usable by” must be maintained in operable working order
 Isolated and temporary interruptions in service or access due to maintenance or repairs are allowed

RETALIATION OR COERCION

{35.134}

Discrimination not allowed against individuals who make a charge, testify, assist or participate in an investigation, proceeding, or ADA hearing
Coercion, intimidation, threats, and interference not allowed
Prohibitions apply to public and private entities

PERSONAL DEVICES AND SERVICES

{35.135}

Types not required to be provided by public entity:
Wheelchairs
Individually prescribed devices, such as:
 Prescription eyeglasses or hearing aids
Readers for personal use or study
Services of a personal nature including:
 assistance in eating, toileting, or dressing

PROGRAM ACCESSIBILITY

{Subpart D}

“Except as otherwise provided for in (existing facilities), no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, 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 public entity.”

EXISTING FACILITIES

{35.150}

“A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.”

This paragraph does not (necessarily) require:
 Making every existing facility accessible
 Any action that would threaten or destroy the historic significance of historic property

NOT REQUIRED

{35.150}

Any action that would fundamentally alter the nature of a service, program or activity
Result in undue financial and administrative burdens

FUNDAMENTAL ALTERATIONS AND UNDUE BURDENS {35.150}

Public entity has burden of proof for relief
Decision must be made by head of the public entity
after considering all resources available for
use in the funding and operation of the program
Must issue a written statement of reasons
Must take other actions to make program available

METHODS OF COMPLIANCE IN EXISTING FACILITIES {35.150}

Redesign equipment
Reassign services to accessible buildings
Assign aides to beneficiaries or home visits
Delivery of services at alternate, accessible sites
Alteration of existing facilities
Construction of new, accessible facilities
Use accessible rolling stock or other conveyances
Other methods to achieve “readily accessible”

ADDITIONAL NOTES FOR EXISTING FACILITIES {35.150}

No requirement to make structural changes where other
methods are effective in achieving compliance
Alterations to existing buildings must meet
requirements for alterations in {35.1 51}
Selection of compliance methods should give priority to
methods that offer the most integrated setting appropriate

HISTORIC PRESERVATION PROGRAMS {35.150}

Priority shall be given to methods that provide
physical access to individuals with disabilities
When alterations would threaten the historic
significance, fundamentally alter the nature of
the program or result undue burdens, alternative methods of
achieving program accessibility might include:

ALTERNATIVE METHODS FOR HISTORIC PRESERVATION PROGRAMS {35.150}

Using audio-visual materials and devices to depict
inaccessible portions of historic property
Assigning persons to guide individuals with
disabilities through inaccessible areas
Adopting other innovative methods

DEADLINES FOR STRUCTURAL CHANGES {35.150}

Where structural changes are required:
As expeditiously as possible
Completed no later than January 26, 1995
Following the "Transition Plan", if applicable

TRANSITION PLAN {35.150}

Required where:
Structural changes will be undertaken to achieve
program access
Public entity employs 50 or more persons

TRANSITION PLAN INCLUDE {35.150}

Steps necessary to complete changes to facilities
Public inspection, comments and participation
Identification of physical obstacles in facilities
that limit access
Detailed methods that will be used to make
facilities accessible
Schedule for taking steps required for compliance
Name of official responsible for implementation

STREETS, ROADS AND WALKWAYS {35.150}

"If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas."

COORDINATION WITH SECTION 504 TRANSITION PLAN {35.150}

New transition plans required only for policies and practices not included in previous transitions plans developed under section 504 of the Rehab Act of 1973

NEW CONSTRUCTION {35.151}

“Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.” (If the date that bids are invited is after January 26, 1992.)

NEW CONSTRUCTION AND ALTERATIONS {35.151}

New Construction

Shall be designed and constructed to be readily accessible to and usable by individuals with disabilities when bids are invited after 1-26-92

Alterations

Shall be altered to the maximum extent feasible to be “readily accessible to and usable by” when bids are invited after 1-26-92

ALTERATIONS {35.151}

“Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.”

ACCESSIBILITY STANDARDS {35.151}

Public entities may choose either:
Uniform Federal Accessibility Standards (UFAS) or
Americans with Disabilities Act Accessibility
Guidelines for Buildings and Facilities (ADAAG)
{Not including the elevator exemption}
Departures from the standards are allowed when
clearly equivalent access is provided

COMMUNICATIONS

{Subpart E}

“A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.”

COMMUNICATIONS

{Subpart E}

“A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.”

COMMUNICATIONS

{Subpart E}

“In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.”

TELECOMMUNICATION DEVICES FOR THE DEAF (TDD’S)

{35.161}

“Where a public entity communicates by telephone with applicants and beneficiaries, **TDD’s or equally effective telecommunication systems** shall be used to communicate with individuals with impaired hearing or speech.”

TELEPHONE EMERGENCY SERVICES

{35.162}

“Telephone emergency services, including 911 services, shall provide **direct access** to individuals who use TDD’s and computer modems.”

INFORMATION AND SIGNAGE

{35.153}

“A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.”

INFORMATION AND SIGNAGE {35.163}

“A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities.”

ATTORNEY’S FEES {35.175}

“In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.”

ALTERNATIVE MEANS OF DISPUTE RESOLUTION {35.176}

Encouraged to resolve disputes under the Act
Settlement negotiations
Conciliation
Facilitation
Mediation
Fact-finding
Mini-trials and
Arbitration

STATE IMMUNITY {35.178}

“A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act.”