

# ADA Title II – Public Entity Responsibilities and Ideas for ADA Coordinators

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## CAUTION

- I am not a lawyer. I am presenting information for your consideration from my personal perspective as an ADA and access specialist that I have found helpful in my practice. I hope that some of them will be helpful for you.
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## Overview Five Phases of Access Compliance for Public Entities

Five Phases Courtesy of Michael Mankin and CA DGS

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## Five Phases of Access Compliance

- Phase I – Commitment
- Phase II – Self-Evaluation
- Phase III – Transition
- Phase IV – Implementation
- Phase V – Ongoing Support

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## Five Phases of Access Compliance

### Phase I – Commitment

- Agency Head or Department Director demonstrates a commitment to Access Compliance

### Phase II – Self-Evaluation

- Complete Self-Evaluation and develop Transition Plan to identify and resolve accessibility issues

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## Five Phases of Access Compliance

### Phase III – Transition

- Prepare Budget and correction plan to submit to Department of Finance for approval

### Phase IV – Implementation

- Implement all items in the Self-Evaluation and remove structural non-compliance items of the Transition Plan

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## Five Phases of Access Compliance

### Phase V – Ongoing Support

- Continue involvement and resolution of all problems and issues related to ADA. Provide periodic assessments related to the proper maintenance of all access features.

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## Common Roles of the ADA Compliance Coordinator and the ADA Compliance Working Group

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### ADA Compliance Coordinator

- Maintain Accountability within the ADA Working Group for Completion of Assigned Tasks
- Coordination with Disability Community Representatives
- Coordinate Responses to Specific Questions
- Contact with Federal Authorities
  - Technical Assistance
  - Complaints
- Response to grievances, complaints and plaintiffs
- Maintain Updated Library of ADA Standards
- Other

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### ADA Compliance Working Group

- Determine Philosophical Basis for Compliance Decisions
  - Motivators
  - Financial Perspective
- Process for Responding to Specific Needs
  - Requests
  - Grievances
  - Complaints
  - Lawsuits
  - Media Requests
- Set Priorities for Work When Budget Is Limited
- "Adopt-a-Disability" Exercise for all Task Force Members – Work with Local Center for Independent Living
- Other

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### Primary Compliance Responsibilities

(Abbreviated List)

- Self-Evaluation of Programs, Policies, Procedures and Practices
- Ongoing Review of ADA Communications Requirements
  - Notification of Interested Parties about ADA Coverage
  - Develop Complaint Procedures
  - Review Telephones, TDD's, Security Phones, etc. for Compliance
  - Develop Notification Procedures for Additional Auxiliary Aids and/or Services
  - Verify Individuals with Disabilities can Obtain Info. about Accessible Programs
- Review Entities Receiving Contracts or "Significant Assistance"
- Review Policies for Licenses and Appointments

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### Primary Compliance Responsibilities

(Abbreviated List)

- Review Procurement Criteria and Procedures
- Survey of Facility Barriers
- Review Streets and Walkways under Control of Entity
- Transition Plan
- Barrier Removal to Assure Program Access
  - Physical
  - Administrative
- Periodic Review of Maintenance and Repair Policies
- Verify New Construction and Alteration Projects' Compliance (Continuing Process)

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### NOTE

All Entities must make reasonable accommodations to their application, interviewing & advancement process to allow employees and potential employees with disabilities to have access. This may require physical alterations that are more extensive or costly than those required in the "Existing Facilities" column above.

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Keys to Success  
as an  
ADA Coordinator

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Where do you start?

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**First:** Understand why you are doing  
anything at all.

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**First:** Understand why you are doing anything.

1. What is motivating your organization to spend time and money thinking about access issues?
2. What will motivate the organization to actually budget and spend the money to provide access according to the plans?

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### Three typical motivators drive people to start an ADA Program

- The desire to avoid something unpleasant
- The desire to achieve something worthwhile
- The desire to “do what is right”

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### Those motivators result in four typical levels of commitment to the work:

- The Ostrich
- The Minimalist (simple compliance)
- The Good Politician (whatever makes sense)
- The Good Samaritan or Idealist

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**Second: Identify what you want to accomplish**

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**Second: Identify what you want to accomplish.**

1. Understand the issues, requirements and expectations
2. Find and build support
3. Develop a plan
4. Carry out the plan
5. Weave the requirements and approach into the bureaucratic fabric

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**Third: Identify your existing Allies and where you'll need new ones.**

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**Third:** Identify your existing Allies and where you'll need new ones.

1. Insiders and outsiders
2. Natural Allies
3. Unexpected Allies

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**Fourth:** Identify and assess your potential Champions.

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**Fourth:** Identify and assess your potential Champions.

1. Who are they?
2. Where are they?
3. What assets can they bring to the process?
4. What are their strengths and weaknesses?

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**Fifth:** Assess your organization's current situation and direction(s), then plan how you can change what you already have and where you're heading.

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**Fifth:** Assess your organization's current situation and direction(s), then plan how to change as needed

1. Programs
2. Communications
3. Public Service/Operations
4. Maintenance, Design and Construction
  - A. Prevention
  - B. Barrier removal

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**A. Prevention: "When you're trying to get out of a hole...first stop digging!"**

- a) Plan reviews to identify problem areas and causes
  - i. New construction
  - ii. Alterations
- b) Training and materials tailored to your most "productive" barrier creators
- c) Training and materials tailored to your most capable "watchdogs"

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**B. Barrier Removal**

- a) Funded transition plan
- b) Maintenance and in-house repairs staff
- c) Piggy-back approach
- d) Responding to requests
  - i. Budgeting & availability of \$ for requests (on-budget vs. off-budget)
  - ii. Urgent and immediate
  - iii. Requests with notice

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**Sixth:** Figure out how to pay for it.

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**Sixth:** Figure out how to pay for it.

1. In case you don't already have more money than you need
2. Doing the work with internal staff & resources.
3. Using local advocates
4. Using outside consultants and experts

(More on this later.)

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**Seventh: Do it!!!!**

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**Funding the Program Access  
Barrier Removal Program**  
(Using Non-traditional Sources)

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**Non-traditional Funding Sources**

- Once you have identified the existing physical barriers in your facilities that limit program access for people with disabilities...

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### **Avoid creating new barriers**

- Trying to improve access is like getting yourself out of a hole. Your first task should be to stop digging the hole any deeper.
- Your first “funding source” to improve access is to avoid the costs of fixing new barriers that should have never been built.

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### **Avoid creating new barriers**

- Train your maintenance staff on the types of barriers you’ve found and want to avoid re-creating in the future.
- Train your operations people to properly use the accommodations you have.
- Train your front-line “customer service” staff to help ward off expensive lawsuits.
- Train your in-house design and construction staff.
- Train your design consultants and contractors and hold them accountable.

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### **Look for ways to piggyback barrier removal work onto other projects**

#### **New construction work**

- Replace non-compliant facilities and elements.
- Tear up old barriers in preparation for the new construction work.

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### **Look for ways to piggyback barrier removal work onto other projects**

#### **Additions**

- The Path of travel requirement applies to all additions projects – do it!
- Use the new addition to provide a new accessible route.
- Locate the new addition where a barrier is now.

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### **Look for ways to piggyback barrier removal work onto other projects**

#### **Alterations work**

- Path of travel requirement applies to every alteration project affecting a primary function area in facilities (including most street repairs).
- Seismic and other code-related upgrades may trigger accessibility upgrades (especially in CA).

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### **Look for ways to piggyback barrier removal work onto other projects**

#### **Maintenance work**

- Provide your maintenance team with full access to your database of the barriers they can fix, then integrate the removal of those barriers with their normal work when they have a few spare minutes. Keep the long list of small barrier removal projects obvious and require regular reports on how that work is proceeding.
- Never allow a new, non-compliant element to replace a worn-out or broken non-compliant element.

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## Look for new funding sources

- Appeal to donors – support for the goals and specifics of ADA compliance work is high among business owners, foundations, the general population, and especially among older donors.
- Seek grants from foundations and other sources.
- Look into Crowd Source funding...

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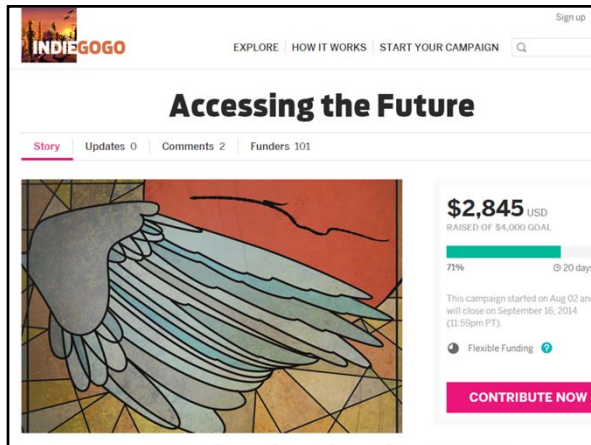
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## Look for new funding sources

- Seek state and Federal funding that can be spent on barrier removal.
  - Community Development Block Grants
  - FEMA disaster relief money
  - Direct construction funding
  - Targeted Congressional funds

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### **Look to your landlords and tenants**

- Write your leases to require your landlords to comply with all Federal and State codes, laws, and regulations – then hold them to it by giving them detailed lists of specific ADA problems in your facilities. It will be more difficult for them to claim ignorance later in a lawsuit if you gave them the details. That reality may stir them to earlier action.
- Remind your For-profit Landlords and Tenants to file for tax credits and deductions where applicable.

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### **Look to your landlords and tenants+**

- Verify ADA compliance before renewing old leases or entering into ANY new facility leases.
- Require your tenants to cover the expenses of compliance in their portions of your facilities.
- Where you contract with vendors to provide services on your behalf, specify that they are responsible for full ADA compliance (Title II & III if both are applicable) in providing those services.

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### **Identify win-win opportunities to trade**

- You have things of value that you can't sell but can probably trade for services you can't afford. For example, offer low-rents on facilities you can't sell to non-profit organizations who can perform services for you like Braille printing, transcription services, sign language interpretation, etc.

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**Identify volunteers who would be willing to help with barrier removal**

- Set up an annual "Equal Access for Everyone" day where volunteers are trained to identify barriers and fix them by doing simple tasks like trimming landscaping that is in the accessible route, adjusting heavy door closers, repainting parking lot striping, etc.

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**Other State and Federal Programs**

- Take advantage of other state and Federal programs to provide job training, employment assistance, and salary payment for newly hired individuals with disabilities.

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**Administrative Methods**

- **Use administrative / alternative methods** to provide program access until full funding for physical barrier removal is available.

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## Hold Back Funds

- **Hold back the last 10% or so of your annual barrier removal budget to be available for fixing the urgent requests that will inevitably arise out of sequence.** Then, at the end of the budget year, spend the rest of it on the remaining barriers in your annual plan. You may need special budget authority to allow these quick adjustments to your plan. Some requests may need approval within hours.

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- Updated ideas coming soon...

[www.adafunding.info](http://www.adafunding.info)

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## Working with a Disability Advisory Committee

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## Statewide Disability Advisory Council

The Statewide Disability Advisory Council (SDAC) was established to assist all departments in maintaining their respective Disability Advisory Committees (DAC). As of July 1, 2012, the SDAC is under the guidance of the California Department of Human Resources. Government Code Section 19792 requires CalHR to "provide statewide leadership, coordination, technical guidance and enforcement regarding efforts to fully achieve equal employment opportunity and non-discriminatory employment practices within the state civil service". SDAC supports departments in achieving this effort. SDAC serves as an advisory committee to the CalHR Director to help California State Government increase and improve employment opportunities for people with disabilities. SDAC members consist of representatives from departmental disability advisory committees and Equal Employment Opportunity staff. At monthly meetings, members discuss employment issues of concern to state employees with disabilities, share information, and recommend actions to the Director.

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## CA Department of Rehabilitation

- The DAC focuses its efforts on the following topics:
  - Promoting - disability employment awareness.
  - Providing ideas and feedback related to DOR efforts to recruit, retain and provide upward mobility employment.
  - Advising the department regarding its provision of a reasonable accommodation
  - Enhancing health and safety

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## Self Evaluation and Transition Plans, Barrier Removal Plans, and Action Plans

(And Other ADA Title II Facilities Requirements)

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## WHAT'S REQUIRED AND WHY?



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### Self-evaluation (1)

ADA regulation: Evaluate services, policies, and practices, and the effects of them, that do not or may not meet title II requirements

- Describe areas examined, problems identified, modifications made
- Provide opportunity for interested persons to participate (submit comments)
- If entity larger than 50 employees, keep record of self-evaluation on file and available for public inspection for three years
- Make any necessary modifications [action plan]

1991 DOJ regulation: 28 CFR 35.105

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### Self-evaluation (2)

- DOJ on do-overs  
“If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504... then the requirements [about self-evaluation] apply only to those policies and practices that were not included in the previous self-evaluation.”

1991 DOJ regulation

- Similar requirements under section 504 regulation

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## Benefits of a self evaluation

- Position the entity for compliance
  - Identify weaknesses
  - Make concrete improvements.
- The regulation tells you to
- You control the process, approach, timing
- Related training can make ADA part of the culture, raise awareness
- Shows good-faith effort
- Compliance!

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## Downside to not acting

- Possibility of harsher mandates from litigation
- Possibility of “bad press”
- Project Civic Access “subject”
- Settlement agreements or lawsuits
  - More likelihood of advocates’ success
  - Court or agreement can make you do more than otherwise
- Someone else controls the process, your resources, your schedule
- Implementation may be delayed pending overall evaluation
  - By end of evaluation, information may not be timely.

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## Time for a do-over?

Why do another plan if we already did one?

- Hmm... Has anything changed?
  - Programs
  - Facilities
  - Web site
  - People
  - Services contracted out
  - Requirements and expectations
  - Higher expectations
- Do you have plans that are current and that you’re following?
- Are you implementing them?

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### What will you be evaluating?

- Programs, activities, services: equal opportunity
- Policies
- “Program access”

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### Discrimination prohibited

- The ADA and section 504 mandate an equal opportunity to participate in programs, activities, and services for people with disabilities
- Section 504 and Title II regulations specifically prohibit denial of equal opportunity to participate in programs, services, and activities because of inaccessible facilities

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### Examples of programs and activities: town, city, county

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|---|--|
| • Hearings, meetings, events (fairs, concerts, graduations) | • Emergency preparedness, evacuation, sheltering |
| • Housing   | • Library services                               |
| • Museum programs   | • Police and fire                                |
| • Recreation  | • Courts   |
| • Events  | • Corrections                                    |
| • Tours   | • Procedures                                     |
| • Social services and benefits                              | • Mass transit                                   |
| • Voting  | • Access to streets and sidewalks                |
| • Web sites, IT   | • Zoning issues                                  |

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**Examples of programs and activities:  
college, university**

- Admissions
- Financial assistance
- Athletics
- Academic departments
- On-line learning
- Housing
- Recreation
- Student activities
- Alumni affairs
- Emergency preparedness, evacuation, sheltering
- Library services
- Meetings, hearings, conferences
- Access to streets and sidewalks
- Web sites

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**Core topics**

- Policies that may discriminate
- Separate programs/services
- Communication
- Infrastructure
- Outside entities (vendors, contractors, grantees)
- Furniture, equipment, purchasing
- Applications
- Tests
- Participation requirements (initial and continuing)

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**Contractors and other partners**

- A title II entity is responsible for actions of contractors and other partners when they carry out the title II entity's activities
- The title II entity cannot "contract away" its title II duties

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## “Significant assistance”

- If an entity provides significant assistance to organization or person for their programs/services, ensure compliance



[http://www.knox.edu/Images/\\_News/news\\_media/img/2003/tke-ramp-18s.jpg](http://www.knox.edu/Images/_News/news_media/img/2003/tke-ramp-18s.jpg)

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## FIRST, SOME DECISIONS

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## Self-evaluation

Review: Public entities are to

- evaluate current services, policies, and practices, and the effects of them, that do not or may not meet title II requirements and
- make any necessary modifications

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### Where are you now?

- When did you do your last self-evaluation or transition plan?
- What has changed (other than some of the requirements!)?
- Should you develop policies, train, and then assess?
- What needs attention most or first?
- Do you have support from the top? Legal? Facilities? Others?

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### You are unique: What will work for you?

- Consider your “culture”
  - How does your entity work?
  - How does change happen?
  - How does disability compliance fit within the compliance structure?
- Consider your constituency
  - Input from people with disabilities: when, who, how
  - Input from program managers
  - Input from the public

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### Decisions (1)

- **Level of detail**
  - What’s a program
  - How deep do you go in analysis
  - How much data can you handle
  - How quickly do you want this done
- **Tools**
  - Overview of programs, policies, etc.
  - What does each department do?
  - Program survey
  - Facilities survey
  - Way to track changes

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## Decisions (2)

- Analysis
- Reporting
- Planning for remediation
- Making the changes

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## Challenges

- Tying together service and facility issues
- Outside parties
  - Procurement
  - Vendors
  - Facilities owned by others
  - Others' use of your facilities
- Programs carried out mostly by contractors, delegate agencies – Title II obligation stays with entity
  - Shelters for those who are homeless, experience domestic violence
  - Child care
  - Family services

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## Do it yourself or outside consultant?

- Process can be
  - Entity-driven
  - Consultant-driven
  - A mixture
- ADA Coordinator plays a key role in any of these.
- Consider how much time and money entity can devote
- “Informed insiders” are the best evaluators

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FOUR STAGES

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**Step by step**

- Plan
- Gather information
- Analyze and report
- Implement

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**Reporting and planning**

Report by –

- Town/city if small or
- Department or
- Each program, service, or activity

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**ALTERNATIVES**

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- Instead of or in addition to a self-evaluation...**
- Focus on what's new
  - Focus on where improvement is needed
  - Develop policies, check for compliance after a while
  - Train on difficult areas
  - Open-ended interviews
  - Reviews of policies

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- Address vulnerabilities and DOJ priorities**
- |                                     |   |
|-------------------------------------|---|
| ▪ Known problems or complaint areas | • Housing   |
| ▪ Emergency preparedness            | • Voting  |
| ▪ Web accessibility                 | • Shelters  |
| ▪ Information technology            | • 911   |
| ▪ Recreation                        | • Facilities not safe-harbored  |
| ▪ Health care                       | • Mobility devices  |
|                                     | • City-wide program access obligation for programs carried out by third parties |

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# Program Access Through Transition Planning

(And Other ADA Title II Facilities Requirements)

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## What is “Program Access”?

- A term of art
- Relates to discrimination resulting from a lack of access to facilities

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## When do program access requirements apply?

- Program access requirements related to facility access apply in addition to the requirements for new construction and alterations, and in addition to self evaluation requirements related to communications, policies, and procedures.
- When no new construction or alterations are taking place, there is still an obligation to remove barriers to program access.

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## The Transition Plan requirement

**Title II ADA Regulation** at 28 CFR 35.150(d)

“If structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop ... a transition plan setting forth the steps necessary to complete such changes.”

- Opportunity for interested parties to participate
- Copy available for public inspection (no time given)
- Make changes by January 26, 1995 (as expeditiously as possible)

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## Title II - Typical questions

Title II: programs in existing facilities must be accessible in their entirety (cannot deny benefits, services, etc. due to inaccessible facilities).

- What is an “existing” facility?
- What is a program?
- What are the characteristics of an accessible program?
- When is a feature or element accessible?
- Are the ADA Standards the limit?

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## “Existing facility”

**DOJ definition in 2010 Reg’s. -  
An “existing facility” is one  
that exists...**

- -- that is, on a given date
- One building can be both new and existing.
- Significance for program access: ALL buildings/facilities are evaluated



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## What is a Program?

- “Programs, services, activities, aids, and benefits” provided by or on behalf of a public entity. For example, in parks and recreation:
  - Senior center exercise classes
  - Swimming lessons
  - Swim team
  - Swimming competitions
  - Free swim opportunities
  - Day care
  - Summer camp
  - Fishing
  - Hiking
  - Little league teams
  - Concession stands and their offerings
  - Etc...

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## Some characteristics of program access

- Provide equal opportunity
- Range of choices similar to others’
- Integration
- Privacy / confidentiality
- Dignity

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## When is a feature/element “accessible”?

- New reference point: 2010 ADA Standards (Standards for alterations in older facilities)
- 1991 ADA or UFAS may provide “safe harbor”
  - If by March 15, 2012, facility elements affecting programs met these standards for accessibility
  - Major new obligations for those elements not safe harbored... examples:
    - » Pools
    - » Exercise machines and equipment
    - » Residential facilities dwelling units
    - » Play areas
    - » Team or player seating

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### Now that the Standards have changed...

- Existence of barrier is measured by looking to the Standards
- Remedy to barrier is measured the same way
- SO what happened when the “measure” changed?



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### New safe harbor for program accessibility

Existing elements that complied with pre-2010 requirements (UFAS or 1991 ADA Standards) are “safe” from further changes for the sake of program accessibility until they are altered.

2010 ADA regulations at section 35.150(b)(2)(i)

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### Are the Standards the Limit?

- Program access is more flexible than the Standards but the equal opportunity requirements may require you to go “beyond” the standards
  - Automatic doors
  - More accessible parking
  - Bariatric fixtures/equipment
  - Etc.

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### Other Limits

#### Program access does not require:

- Fundamental alteration in the nature of a service, program, or activity
- Undue financial and administrative burdens
- BUT:
  - Any undue burden decision must be made by the head of the public entity after considering **all** resources available and it must be in writing
  - And, the public entity must still take other actions that will not result in fundamental alteration or undue burdens, but still provide program access
- See also historic exceptions, 28 CFR 35.150(a)(2), 35.150(b)(3)

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### Transition Planning Considerations

- I. Overview of the requirements of the law for physical & program access
- II. Breadth and scope of facility types covered
- III. Types of physical barriers
- IV. Alternative methods
- V. What must be included in the plan
- VI. Which Standards?
- VII. Logical approaches to providing physical access

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### Transition Planning Considerations

- VIII. Facility selection for program access
- IX. Surveying facilities for program access
- X. Information needed
- XI. Barrier prevention and monitoring
- XII. Leased facilities
- XIII. TP practicalities
- XIV. Funding the work

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**I. Overview of requirements for physical and/or program access**

- a. New Construction commenced after January 26, 1992
- b. Alterations commenced after January 26, 1992
- c. Facilities where programs, activities, and services take place (with some exceptions)
  - 1. Unaltered areas of existing facilities
  - 2. Leased facilities
  - 3. Facilities controlled by others

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**II. Typical breadth of facility types covered**

- a. City and town halls and administrative centers
- b. Courthouses
- c. Jails, Prisons, and detention centers
- d. Police stations
- e. Fire stations
- f. Sheriffs' departments

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**II. Typical breadth of facility types covered (cont'd)**

- a. Polling places
- b. Parking decks
- c. Health care delivery centers
- d. Childcare centers
- e. Teen activities centers
- f. Senior activities centers
- g. Emergency shelters

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**II. Typical breadth of facility types covered** (cont'd)

- n. Animal shelters
- o. Libraries
- p. Museums
- q. Fairgrounds
- r. Convention centers
- s. Auditoriums and theaters
- t. Baseball and football stadiums
- u. Visitors centers

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**II. Typical breadth of facility types covered** (cont'd)

- v. Parks, also including
  - i. Public Gardens
  - ii. Recreation centers
  - iii. Golf courses
  - iv. Ice skating rinks
  - v. Public swimming and wading pools
  - vi. Playgrounds
  - vii. Ball fields

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**II. Typical breadth of facility types covered** (cont'd)

- v. Parks, also including (cont'd)
  - viii. Bleachers
  - ix. Tennis centers
  - x. Band shells
  - xi. Gazebos
  - xii. Marinas and fishing facilities
  - xiii. Nature trails
  - xiv. Shared use paths

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**II. Typical breadth of facility types covered** (cont'd)

- w. Airports, public transportation stops, and transit stations
- x. Public rights of way elements
- y. Waste disposal/landfill facilities open to public use
- z. All other public entity owned and/or controlled public facilities

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**III. Types of physical obstacles listed most frequently in DOJ Agreements**

- a. Parking
- b. Curb ramps
- c. Routes from public transportation, accessible parking, streets and/or sidewalks to accessible entrances
- d. Routes through the facilities
- e. Doors and door hardware
- f. Ramps and handrails
- g. Stairs and handrails

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**III. Types of physical obstacles listed most frequently in DOJ Agreements (cont'd)**

- h. Elevator cabs and lobbies
- i. Platform lifts
- j. Rest rooms, accessible plumbing fixtures, and accessories
- k. Showers and bathing facilities
- l. Dressing and locker rooms
- m. Alarms
- n. Signage (all required types)

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**III. Types of physical obstacles listed most frequently in DOJ Agreements (cont'd)**

- o. Drinking fountains
- p. Telephones
- q. Service and ticket sales counters
- r. Concession stands and gift shops
- s. Wheelchair seating in assembly areas
- t. Access to stages and performing areas
- u. Assistive listening systems
- v. Libraries

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**IV. Physical access v. alternative methods**

- a. Flexibility allowed in achieving program accessibility: any method that results in making services, programs or activities accessible
- b. BUT public entity must give priority to those methods that provide for integration of persons with disabilities
- c. Physical access is not required to every facility where alternative methods are as effective in providing program access, but, where structural changes are required, a transition plan is required

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**IV. Physical access v. alt. methods (cont'd)**

- d. Alternative methods for compliance in existing facilities may include
  - i. Redesigning equipment
  - ii. Reassigning services to accessible buildings
  - iii. Assigning aides to beneficiaries or home visits
  - iv. Delivery of services at alternate sites
  - v. Alteration of existing facilities
  - vi. Construction of new, accessible facilities
  - vii. Use of accessible rolling stock or other conveyances
  - viii. Other methods to achieve "readily accessible to and usable by"

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**V. Regulatory “requirements” of what must be included in a transition plan**

- a. Identify all physical obstacles (**barriers**) in the facilities that limit program access
- b. Detail the **methods** that will be used to make the (programs and/or) facilities accessible
- c. **Schedule** the steps to be taken each year to achieve compliance
- d. **Name of official responsible** for implementation

[If authority over streets, roads, walkways, include schedule for curb ramps or other sloped areas where pedestrian walks cross curbs. 28 CFR 35.150(d)(3)]

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**VI. Determine which Standards will be used to identify barriers**

- a. 2010 ADA Standards
- b. 1991 ADA Stds. or UFAS (for Safe Harbor)
- c. State and/or Local Standards (SH ?)
- d. Rehab. Act - Section 504 program access standard
- e. Public right of way
- f. Shared use paths
- g. Outdoor developed areas

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**VII. Logical approach Option “A” for identifying barriers and removing them for physical access**

- a. **Identify every program** offered and evaluate each program for barriers. Remove, then:
  - i. Train program-setting employees to recognize and avoid barriers when moving and adding programs and services and when scheduling all public activities and events
  - ii. Update transition plan, secure funding, and eliminate barriers every time programs move or are added to inaccessible facilities or areas within facilities

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**VII. Logical approach Option “B” for identifying barriers and removing them for physical access**

- b. Identify areas** in every facility where programs are offered and then identify all barriers in those areas. Remove them, then:
  - i. Train program-setting employees to schedule programs, services, public activities and events only in areas of facilities that are already physically accessible
  - ii. Update transition plan, secure funding, and eliminate barriers only when programs move or are added to the few remaining inaccessible facilities or areas within facilities

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**VIII. Select facilities where programs will be offered to achieve program access**

- a. Verify ALL programs, services, and activities will be accessible
- b. Not every facility must be made fully accessible
- c. Chances are you won't survey every facility at once – this is likely a long-term process
- d. Plan your work in phases that can realistically be funded over time

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**VIII. Select facilities where programs will be offered to achieve program access (cont'd)**

- c. If every facility will not be accessible, consider how the facilities are used
  - 1. Example – two auditoriums: BOTH must be accessible
  - 2. Example – twenty swimming pool facilities: SOME must be accessible
    - i. Swim meets must be held only at accessible pools
    - ii. Swimming lessons must be offered at accessible pools

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### VIII. Multi-site programs

Entities have discretion in determining how many facilities of a multi-site program must be made accessible to achieve overall program accessibility.



Examples: City parks, county courts

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### VIII. Multi-site programs

DOJ 2010 regulation preamble describes factors for evaluation of multi-site program for “accessibility in its entirety”

- Size of entity
- Program features at each site
- Distance between sites
- Travel times
- Number of sites
- Public transportation
- Integrated setting

➤ Does not adopt concept of “reasonable number”

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### VIII. Setting facility priorities

**Which facilities and elements are the most important to review and fix first?**

- i. Highest use
- ii. Most critical for people with disabilities and seniors
- iii. Those where corrective work has been requested by users
- iv. Facilities with frequent use without advanced notice
- v. Facilities offering unique programs and services
- vi. Distributed locations
- vii. Access to public transportation

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**Some factors to consider when setting facility priorities:**

- Programs offered
- Geographic distribution
- Communities served
- Public transportation

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**VIII. Setting facility priorities (one approach)**

Setting Initial Facility Priorities for Program Access

# Facilities (by type)	Highest Use	Critical Use	Requested Corrections	Frequent Use w/out Notice	Unique Programs	Location & Transportation
1 Competitors Swim Center	5	5	3	5	8	5
2 Hot Bodies Pool, Rec.Center, & Daycare	4	3		4	6	5
3 The Old Springs	2	2	2	1	1	2
4 Campground Pool, Playground & Trails	1	4		3	3	1
5 New Burbs Aquatic Center	3	3	1	1	2	1
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**VIII. Setting curb ramp priorities**

**Which curb ramps tend to have the highest priorities?**

- Those where work has been requested by users
- Curb ramps serving facilities for seniors and people with disabilities
- Highest use
- Closest to critical program facilities (like emergency shelters and healthcare)
- Areas where no curb ramps currently exist

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**VIII. Public input options** (Interested parties)

- **When**
  - At beginning
  - As to tentative findings
  - As to recommendations
- **How**
  - Public hearings
  - Meetings with constituencies
  - Online surveys/comments
- **Who**
  - Advisory committees
  - Advocacy groups
  - Individuals

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**IX. Survey facilities to identify physical obstacles (barriers) that limit program access**

(Training on this process could take days... or years.)

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**X. Additional information needed about each facility, each barrier, and each solution**

Additional information is needed about each facility, each barrier, and each solution and care must be taken to organize that information to communicate the barriers information effectively, to make decisions consistently and appropriately, and to efficiently coordinate and implement the plan.

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**X. a. Facility information**

- i. Facility name (and numerical identifier if one is used)
- ii. Facility type (if one is used)
- iii. Date of initial occupancy and last major renovation (if any)
- iv. Address of facility
- v. ADA contact/coordinator at facility
- vi. ADA contact's phone number
- vii. Date facility was surveyed to identify barriers to be removed
- viii. Name and phone number(s) of ADA surveyor(s)

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**X. a. Facility information (Cont'd)**

- ix. Surveyor's notes about any difficulties encountered during survey and any questions that need to be answered before the facility is ready for inclusion in final transition plan
- x. If desired, which spaces, features, and/or elements of the facility are already accessible and need no further work
- xi. Executive summary of physical barriers identified
- xii. Overall photograph(s) of the facility for general reference

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**X. a. Facility information (Cont'd)**

- xiii. After physical barrier removal is complete:**
  - 1. Date last physical barrier was removed
  - 2. Name of individual certifying all work was completed as noted below
  - 3. Certifier's contact information
  - 4. General notes and exceptions

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**X. b. Physical barrier information**

- i. Unique barrier identification number
- ii. Exact location of physical barrier
  - 1. Described in words
  - 2. Marked on a floor or site plan
- iii. Description of existing condition that is non-compliant
- iv. Description of what is required for program access
- v. Reference(s) and figure numbers from the Standards
- vi. Photograph(s) of the barrier showing the problem in context and in detail

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**X. b. Physical barrier information (cont'd)**

- vii. Analysis codes for prioritizing barrier removal if not all will be fixed immediately

- 1. **Use Code** (How much is the area or element used by the Public and/or who controls it?)

**Possible Examples:**

- HP** – High Public use
- GP** – General Public use
- MP** – Minimal Public use
- EV** – Evacuation route or emergency exit
- L** – Landlord controlled area or element
- G** – Other Governmental entity or agency
- T** – Tenant controlled area or element

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**X. b. Physical barrier information (cont'd)**

- vii. Analysis codes for prioritizing barrier removal if not all will be fixed immediately (cont'd)

- 2. **DOJ Code** (simplified priorities from Title III regulations)

- 1 - Access into the facility (out of the weather)
- 2 - Access to programs, activities, and services
- 3 - Access to toilet rooms
- 4 - Access to other elements
- 5 - Duplicate of other program space or element being fixed

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**X. b. Physical barrier information (cont'd)**

**vii. Analysis codes for prioritizing barrier removal if not all will be fixed (cont'd)**

**3. Severity Code (How bad is this specific barrier now?)**

- A** - Safety consideration for people with disabilities
- B** - Blocks access to a significant number of people with disabilities
- C** - Major inconvenience to a significant number of people with disabilities and blocks access for some
- D** - Minor inconvenience to most people with disabilities, major to few, blocks almost none
- E** - Fails stricter state requirement (optional)
- F** - Fully compliant element (optional)
- G** - Safe harbored element (Grandfathered) (optional)

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**X. c. Detailed methods to achieve compliance**

- i.** Description of proposed physical solution
- ii.** Cost estimates or level of effort required for proposed method of correction
- iii.** Any additional requirements of State Standards that will apply
- iv.** Possible alternative method(s)...

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**X. c. Detailed methods to achieve compliance**

- v.** If an alternative or administrative method will be used in lieu of physical barrier removal:
  - 1.** Cost estimate or level of effort for proposed alternative method
  - 2.** How the alternative or administrative method will be communicated to and coordinated with those responsible for implementing it
  - 3.** Identify any difficulties expected with continued dependence on this method
  - 4.** Name and position of individual(s) approving alternative
  - 5.** Decision-makers' contact information

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**X. c. Detailed methods to achieve compliance**

**vi. After decision re: physical fix or alternative method**

1. Who will be responsible for the work
  - a. Specific department, and/or
  - b. Operations staff
  - c. Custodial/Housekeeping staff
  - d. Maintenance staff
    - i. Locksmith
    - ii. Landscaper
    - iii. Carpenter
    - iv. Plumber
    - v. Electrician
    - vi. Other

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**X. c. Detailed methods to achieve compliance**

- e. Capital improvements group
- f. Legal
  - i. Landlord
  - ii. Tenant
  - iii. Other government agency

**vii. After physical barrier removal is complete:**

1. Date barrier was removed
2. Name of individual certifying that work was completed as noted below
3. Certifier's contact information

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**X. c. Detailed methods to achieve compliance**

**viii. After physical barrier removal is complete:  
(Cont'd)**

4. Notes and exceptions
  - a. Differences between initial transition plan and actual physical work that was completed
  - b. Reasons for changes to physical barrier removal
  - c. Who approved changes
  - d. Date of approval

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**X. d. Streets, sidewalks, and curb ramps plan**

- i. Decide whether to use an automated system or a manual method for identifying barriers
- ii. If a manual method, use survey forms with diagrams to assess all existing conditions consistently and develop/select solutions in the field when possible
- iii. Survey only once and collect all information needed for decisions and management of process
- iv. Setting priorities

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**X. e. Organizing and communicating the information**

- i. Difficulties with hard copy data, plans, & spreadsheets
- ii. Database with standard analysis options and tailored reports
- iii. Database live on a secure internet server with layered access for specific user types
- iv. Photos (before and after)
- v. Site and floor plans of facilities, parks, etc
- vi. Geographic information systems to manage PROW and site data and document process (GIS)
- vii. Map(s) showing all facilities with accessible ones noted
- viii. Map(s) showing most accessible routes (keep updated)

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**XI. Barrier prevention and monitoring**

- i. Conducting plan reviews of new projects during design and verifying construction in the field
- ii. Checking alterations projects
- iii. Watching and training maintenance staff
- iv. Training and overseeing custodial staff
- v. Coordinating with operations personnel
- vi. Working with public service representatives
- vii. Following up with vendors and suppliers
- viii. Verifying access to new and changing programs

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## XII. Leased facilities

- i. Under title II, a state or local government should attempt to lease accessible facilities. If they can not, then the program access requirements will apply to the facility that is leased.
- ii. Necessary changes will need to be negotiated with the landlord.
- iii. Refusal on the part of the landlord does not make the changes technically infeasible.

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## XIII. TP practicalities

- i. Access to programs vs. facility access
- ii. Setting priorities when the budget is limited
- iii. Which survey details will you collect?
- iv. Coordinating accessible facility solutions with the operations, maintenance, procurement, and various program providers to assure consistent “program access” in practice
- v. Tracking and communicating what you are doing, what you’ve done, and how to use it

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## XIII. TP practicalities: Coordination

**Coordinate your physical facility access solutions with the operations, maintenance, procurement, and various program providers to assure consistent “program access” in practice**

- Don’t assume that fixing physical barriers will fix all of the problems, that part of your work only provides opportunities for your staff and to provide program access

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### XIII. TP practicalities: Coordination

- Remember: physical changes go in the transition plan
- Other facility-related changes go in the action plan
  - Centralized booking of accessible space
  - Moving furniture, classes, events
  - Training
  - Maintaining accessible features

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### XIII. TP practicalities: Coordination

- Similar issues as with policies in Self Evaluation
  - What did your facility surveys reveal?
  - What are your phased priorities for physical barrier removal to provide program access?
  - What can be accomplished with existing staff and volunteers
- Staff availability and expertise
- Planning and budgeting cycle
- Finding and building allies in your organization

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### XIII. TP practicalities: Communication

#### Determine how new solutions can best be communicated to all involved parties

- Managers who will approve and assign responsibilities
- Staff who will implement the changes
- Employees who will do their work differently
- People with disabilities who will be the beneficiaries and need to plan their activities and program participation
- Use multiple communication methods
  - Modify existing materials and handouts
  - New Internet resources
  - Resource numbers and email addresses for answers

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### XIII. TP practicalities: maintenance

Accessible features must be maintained in operable working condition.

- Lifts
- Parking aisles
- Clear spaces
- Door closers
- Automatic doors
- Grab bars
- Sidewalks



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### FYI - Title III (1)

- Title III applies to “public accommodations and commercial facilities” – private businesses in certain categories.
  - **Public Accommodations** - Generally, those open to the public like retail stores, private universities, theaters, hotels, restaurants
  - Requirement: Meet new construction and alterations requirements AND remove barriers in existing facilities where “readily achievable.”
  - **Commercial Facilities** - Warehouses, factories, non-public offices, etc.
  - Requirement: Meet new construction and alterations requirements

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### Title III (2)

- When providing services for Public Entities, program access obligation may flow through to them.
- Note: Some private entities are also subject to section 504 (recipients of federal financial assistance), with requirements similar to title II’s.

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### Title III (3)

- Remove barriers in existing places of public accommodation to extent readily achievable.
  - Building-by-building analysis
  - “Readily achievable” means “easily accomplishable and able to be carried out without much difficulty or expense”
  - On-going obligation

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### Title III - Barrier removal plan (4)

- Title III Regulation doesn't require one
- DOJ in preamble/guidance urges “procedures for an ongoing assessment” and consultation with organizations representing people with disabilities
- DOJ encourages development of an implementation plan

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### Self Evaluation Examples (1)

- City of Tacoma, Washington -- Self evaluation developed by staff  
<http://cms.cityoftacoma.org/hrhs/ada/FinalADAPlanJune08.pdf>
- San Francisco -- Contractor-developed  
<http://www.sfgov2.org/index.aspx?page=546>
- Sacramento approach (standard activities vs. unique services)  
<http://www.cityofsacramento.org/adaweb/summary.html#sapproach>

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## Self Evaluation Examples (2)

- Fulton County, GA – county-wide report (contractor – ADA One)  
[http://fultoncountyga.gov/images/stories/OEEO/FC\\_I\\_ADA\\_SEval.pdf](http://fultoncountyga.gov/images/stories/OEEO/FC_I_ADA_SEval.pdf)
- Somerville, MA – self-evaluation as basis for transition plan (contractor) (mostly facilities)  
<http://www.somervillema.gov/sites/default/files/Somerville2013-Self-Evaluation.pdf>

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## Other resources

- DOJ's Title II Technical Assistance Manual, at § II-8.2000. <http://www.ada.gov/taman2.html>
- DOJ's Project Civil Access page and ADA Tool Kit <http://www.ada.gov/civicac.htm>
- Department of Education's section 504 guide (outdated, 1978, but helpful guidance) <http://www.ahead.org/sigs/ada-coordinators> (click on Self-evaluation Guide)
- Checklists and Policies for Title II: Samples – in audio conference materials, by ADA One, February 2014

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