

# **Section 3**

## **Legal Requirements**

## What Will Be Covered

- Legal Background
- Why is the ADA Needed?
- Five Titles of the ADA
- ADA Title II - State and Local Services
- ADA Accessibility Guidelines

# Legal Background

## Architectural Barriers Act (1965)

- Required buildings and facilities designed, constructed, altered, or leased with Federal funds must comply with Accessible Design Standards (ANSI A117.1)

## Legal Background

### Rehabilitation Act (1973)

- Section 504 - Prohibited discrimination with Federal funds in any program service or activity to Federal aid recipients
- Required curb cuts on Federally assisted construction

## Legal Background

### Americans with Disabilities Act (1990)

- Civil Rights law that prohibits discrimination against people with disabilities in all aspects of life (regardless of funding source)
- Equal participation and opportunity into mainstream society is goal

## Why is ADA Needed?

- People with disabilities represent a significant segment of population
  - 20 percent (54 million) of the U.S. population over the age of 15 has a disability (*2000 Census*)
  - 17 million Americans have serious hearing disabilities (*2000 Census*)

## Why is ADA Needed?

- People with disabilities represent a significant segment of population
  - 10 - 12 million Americans have vision disabilities
  - 70 percent will eventually have a temporary or permanent disability that makes climbing stairs impossible (*National Council on Disabilities*)

## Five Titles of ADA

- I. Employment
- II. State & Local Government Services**
- III. Public Accommodations Commercial Facilities  
(privately-owned facilities used by the public)
- IV. Telecommunications
- V. Miscellaneous, includes requirements for the  
U.S. Access Board to develop design  
standards**



# Title I - Employment

## Basic Requirements

- Employers must make ***reasonable accommodation*** to provide for the needs of a qualified applicant/employee with a disability
- The environment and equipment used to perform the job must be accessible.

# **Title II - State and Local Government Services**

## **Basic Requirements**

- **Must ensure that individuals with disabilities are not excluded from programs, services, and activities (pedestrian facilities)**
- **Title II requirements based on Section 504 of the Rehabilitation Act (1973)**

## **Title II - State and Local Government Services**

### Basic Requirements

- New construction and altered facilities must be free of architectural and communication barriers
- Existing facilities, policies and programs must be evaluated for discrimination and a plan for modification put in place

## **Title II - New Construction**

New Construction 28 CFR 35.151

- Any facility altered or constructed after January 26, 1992 must comply with ADA Accessibility Guidelines (ADAAG) or Uniform Federal Accessibility Standards (UFAS)
- Can depart from these standards if equivalent or higher access is provided (equivalent facilitation ADAAG 2.2)

## **Title II - New Construction**

New Construction 28 CFR 35.151

- New construction expected to provide highest level of accessibility
  - Free from architectural barriers
  - Free from communication barriers

## **Title II - New Construction**

New Construction 28 CFR 35.151

- Cost of providing accessible features is minimal in new construction

## **Title II - Alterations**

Alterations 28 CFR 35.151

- Facilities altered must:
  - Be made accessible
  - Comply with accessibility standards (ADAAG)

## **Title II - Alterations**

- Alterations must meet minimum design standards:
  - Document, document, document when not able to meet specific design requirements
  - Still required to meet other design specifications when one requirement is technically infeasible



## **Title II - Alterations**

Alterations 28 CFR 35.151

- DOJ considers roadway resurfacing an alteration (1993)
- Roadway resurfacing triggers requirement for curb ramp installations

(Kinney v. Yerusalim, 813 F. Supp. 547 F.D. PA 1993)

## **Title II - Self Evaluation**

### Self Evaluation 28 CFR 35.105

- Public entities:
  - Shall examine accessibility of its current programs, services, and activities
  - Shall maintain records of self-evaluation activities for three years:
    - Who was consulted
    - What was examined
    - What problems were identified
    - What changes are to be made

## **Title II - Transition Plan**

- Every program or inaccessible facility identified in the self evaluation needing structural modifications for accessibility must be in the transition plan
  - Specifies the steps for achieving accessibility
  - Solicit input from interested parties
  - Copy of plan available for public inspection

## **Title II - Transition Plan**

- Transition plan requirement is a carry over from Section 504 Rehabilitation Act (1973)
  - Entities must make necessary modifications by January 1995
- 49 CFR, part 27.11, requires Federal-aid recipients to evaluate policies and practices and schedule modifications
  - Must establish a periodic review and update the evaluation process

## **Title II - Existing Facilities**

Existing Facilities 28 CFR 35.150

- Program access:
  - Pedestrian facilities are a program
  - Allows relocating a public program or providing alternative access to gain access to a service rather than altering a facility
  - Structural changes are required if program cannot be modified

## **Title II - Existing Facilities**

- Alterations to facilities on Transition Plan must meet minimum design standards:
  - Unless it is “technically infeasible”
  - Technically infeasible refers only to structural conditions

## **Title II - Existing Facilities**

- Requires public entities to make programs accessible in all cases unless:
  - Improvement fundamentally alters the nature of the program (for example, a historic building or rugged hiking trail in back woods)
  - Improvement creates undue financial and administrative burden

## **Title II - Existing Facilities**

### Undue Burden:

- Based on all resources available for a program
- Claims must be proven and accompanied by a written statement of reasons and signed by the head of the public entity
- What constitutes undue burden will often be decided in courts



## **Title II - Existing Facilities**

### Undue Burden:

- Exceptions should be rare
- Entities must make good faith effort to provide accessibility
- If full accessibility is not feasible, document what steps were taken
- Applies to existing facilities not new or altered construction

## **Title II - Existing Facilities**

### Summary

- Goal for structural modifications and program access is a level of usability that balances:
  - User needs
  - Constraints of existing conditions
  - Available resources

## **Title II - Maintaining Accessibility**

### Maintaining Accessibility 28 CFR 35.133

- State and local governments must maintain the accessible features of facilities in operable working conditions (for example, curb ramps, sidewalk breaks, buckled bricks)
- Poorly maintained facilities are not accessible or safe

## **Title II - Maintaining Accessibility**

Maintaining Accessibility 28 CFR 35.133

- Examples:
  - Sidewalks blocked by street furniture
  - Elevator that does not work
  - Snow on sidewalk and curb ramp
  - Cleaning drainage system
  - Trimming trees and landscaping

## **Title III - Private Entities Operating Public Facilities**

### Basic Requirement

- Must provide readily achievable barrier removal
- Requirements for Title II entities are more stringent than Title III entities in some areas
- No requirement for evaluation and transition plan

## **Title IV - Telecommunications**

### Basic Requirement

- Requires communication with individuals with disabilities to be as effective as communication with general public

## **Title V - Miscellaneous**

### Basic Requirement

- Directs the U.S. Access Board to develop design guidelines for accessibility standards - Americans with Disabilities Act Accessibility Guidelines (ADAAG)
- ADAAG was adopted by the Departments of Justice and Transportation as ADA standards for accessibility design

# ADA Accessibility Guidelines (ADAAG)

- Serves as lawful design standards of Title II and Title III entities
  - Standards are **minimum** requirements to be used as building blocks
  - Best practices often go beyond the ADAAG



## **ADA Accessibility Guidelines (ADAAG)**

- Title II entities can use either ADAAG or UFAS
- State and local standards must meet or exceed standards when developing state regulations and design requirements
- After final rulemaking for the proposed new ADAAG, State and local agencies must use ADAAG

## **ADA Accessibility Guidelines (ADAAG)**

- Developed for buildings and facilities
- To be applied to public right-of-way
- ADAAG does not address every situation
- **Evolving** document updated periodically

## **ADA Accessibility Guidelines (ADAAG)**

- Entities are required by DOJ Title II regulations to provide accessibility even if ADAAG does not cover specific design issue

## **ADA Accessibility Guidelines (ADAAG)**

- ADAAG is foundation for best practices
- Best practices should be considered for safer and more usable facilities in the public right-of-way
  - Pedestrian environment is more hazardous than the building environment
    - Interactions with motorists
    - Pedestrians travel faster outdoors

## **ADA Accessibility Guidelines (ADAAG)**

- Section 4.2 – Space Allowance and Reach Range
- Section 4.3 – Accessible Route
- Section 4.4 – Protruding Objects
- Section 4.5 – Ground and Floor Surfaces
- Section 4.6 – Parking and Passenger Loading Zones
- Section 4.7 – Curb Ramps

# Recommended Practices Guidance

- FHWA and Access Board have best practice guidance:
  - *Designing Sidewalks and Trails for Access Part II* (FHWA)
  - *Building a True Community* (U.S. Access Board)

# Federal Regulatory Standards

- Manual on Uniform Traffic Control Devices (MUTCD) (FHWA)
- Policy on Geometric Design of Highways and Streets (Green Book) (AASHTO) is the standard for the National Highway System (NHS)