

ADA

TITLE II ACTION GUIDE

For State and Local Governments

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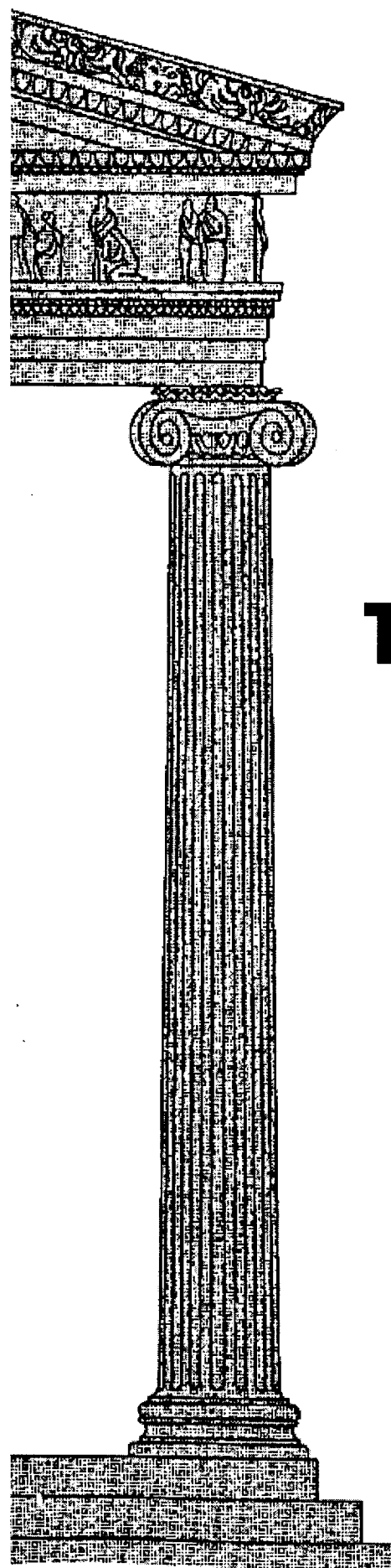
SUPPLEMENT ON EMPLOYMENT

Adaptive Environments Center, Inc.

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ADA

TITLE II ACTION GUIDE

For State and Local Governments

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Table of Contents - Title II Action Guide

INTRODUCTION	1
CHAPTER 1 • OVERVIEW OF TITLE II	5
Basic Building Blocks of Title II	5
Who Must Comply With Title II?	5
What Activities Are Covered?	5
How Is Disability Defined?	6
Exclusions from the Definition of Disability	9
Illegal Use of Drugs	9
Associational Discrimination	9
Who Is a Qualified Individual with a Disability?	10
Direct Threat to Health and Safety	10
What Are the Effective Dates of Title II?	11
How Is Title II Enforced?	11
Relationship Between ADA and State and Local Laws	12
OVERVIEW OF REQUIREMENTS FOR PUBLIC ENTITIES	12
General Nondiscrimination Requirements	13
Equal Opportunity	13
Integrated Settings	13
Methods of Administration	14
Choice of Contractors	14
Licensing and Certification	14
Reasonable Modification of Policies, Practices and Procedures	15
Eligibility Criteria	16
Surcharges	16
Equally Effective Communication	16
Interpreter Services	17
Public Television	18
Telephone Communications	18
Emergency Telephone Services	19
General Information	19
Program Accessibility	19
Access to Existing Facilities	19
Fundamental Alteration and Undue Burdens	21

New Construction and Alterations to Existing Facilities	22
Leases	23
Maintenance of Accessible Features	23
Employment	24
Who Is Covered?	24
What Is Covered?	25
Qualified Individual with a Disability	25
Essential Functions of the Job	25
Reasonable Accommodation: The Employer's Responsibility	26
Choosing the Accommodation	28
The Counterbalance: Undue Hardship	28
Specific Issues in Employment	30
CHAPTER 2 • ACTION STEPS	37
Step One: Designate a Responsible Employee	38
Step Two: Provide Notice of ADA Requirements	39
Step Three: Establish a Grievance Procedure	41
Step Four: Conduct a Self-Evaluation	44
Step Five: Develop a Transition Plan	46
Summary: Title II Requirements and Effective Dates	48
CHAPTER 3 • IMPLEMENTATION	49
Four Principles of Effective Compliance	49
Commitment from Entity Leaders	49
Coordination of Compliance Activities	49
Involvement of People with Disabilities	50
Institutionalizing and Integrating Compliance	50
Three-Phase Process	50
Compliance Flowchart	51
PHASE I: PLANNING FOR COMPLIANCE	52
Statement of Commitment	52
Appointment of the ADA Coordinator	52
Preliminary Planning	54
Drafting the Compliance Process	55
Recruiting, Orienting, and Training the Compliance Team	56
PHASE II: CONDUCTING THE SELF-EVALUATION	58
General Nondiscrimination Provisions	59

Title II Requirements	59
Conducting the Review of Policies and Practices	63
Communication	64
Title II Requirements	64
Conducting the Communication Review	69
Program and Facility Accessibility	71
Title II Requirements	71
Conducting the Program and Facility Access Review	74
The Coordinated Review Process	75
Planning Steps	76
Employment	78
Title II Requirements	78
Conducting the Employment Review	79
PHASE III: IMPLEMENTING MODIFICATIONS	79
Modifying Policies and Practices	79
Developing Communication Capacity	80
Creating Program and Facility Access	81
CAPITAL PLANNING	84
FUNDING FOR STRUCTURAL MODIFICATIONS	84
INSTITUTIONALIZING COMPLIANCE	87
SELF-EVALUATION AND TRANSITION PLAN WORKSHEETS	89
Overview	89
Worksheet 1. Department or Program Listing	95
Worksheet 2. General Policies and Practices Review	99
Worksheet 3. Communication Access Assessment	107
Worksheet 4. Communication Summary and Action Plan	115
Worksheet 5. Facilities Inventory	121
Worksheet 6. Facility Checklist	123
Worksheet 7. Summary of Inaccessible Features	135
Worksheet 8. Program Access Options	137
Worksheet 9. Summary of Architectural Modifications	139
RESOURCES	143
BIBLIOGRAPHY	153
INDEX	155
USER COMMENT FORM	159

Table of Contents - Employment Supplement

PREFACE	S-2
INTRODUCTION	S-3
Employment Issues Update	S-5
Alcohol and Drug Use	S-5
Benefits	S-5
Practical Steps	S-6
SELF-EVALUATION WORKSHEETS	S-7
Worksheet 1. Getting Started: Identifying the Scope of the Self-Evaluation for Employment.....	S-9
Worksheet 2. Identifying Steps in the Employment Process - New Hires	S-15
Worksheet 3. Identifying Stages in the Employment Relationship - Incumbent Workers	S-23
Worksheet 4. Reasonable Accommodation	S-27
Worksheet 5. Essential Job Functions	S-33
APPENDIX: SAMPLE EMPLOYMENT APPLICATION	S-37

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Introduction

About the *Title II Action Guide*

This book is a practical manual and workbook designed to guide state and local government entities through the Title II compliance process. It features a comprehensive planning and implementation process that will help ensure that state and local entities provide equal opportunity to people with disabilities to participate in programs, services, and activities. The *Action Guide* was developed in close cooperation with a number of state and local officials who were involved in the early stages of Title II compliance and who have over a decade of experience with Section 504 compliance. It has been produced under a grant for ADA materials development from the National Institute on Disability and Rehabilitation Research, with review for accuracy by the U.S. Department of Justice, Public Access Section.

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA), signed into law by President Bush on July 26, 1990, is undeniably the most comprehensive formulation of the rights of people with disabilities in the history of the United States or of any other nation.

More than forty million Americans have some kind of physical, sensory, cognitive, or mental disability. Even this figure, however, may not adequately express the importance of the ADA. To appreciate its full impact, it is necessary to understand that virtually every individual and every family in the United States is touched at one time or another by the experience of disability. The ADA's far-reaching provisions for employment, state and local government, transportation, public accommodations, and telecommunications, therefore, have the potential to benefit almost everyone.

Title II of the ADA

The Title II regulations prohibit public entities from discriminating against or excluding people from programs, services, or activities on the basis of disability. Public entities receiving federal funds will find that the Title II requirements are very similar to the requirements of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination in all entities that receive federal financial assistance. Title II extends the requirements of Section

504 to all public entities—whether or not they receive federal funds. Public entities covered by Title II include state or local governments, including all departments, agencies, special purpose districts, or other instrumentalities, as well as certain commuter authorities and AMTRAK.

The provisions of Title II fall into four broad areas: (1) general nondiscrimination, (2) equally effective communication, (3) program accessibility, and (4) employment. Equal opportunity must be provided through reasonable modifications in policies, practices, or procedures; effective communication must be ensured through the provision of auxiliary aids and services; programs must be made accessible through nonstructural (programmatic) or architectural modifications; and nondiscriminatory employment practices are required, as presented in Title I of the ADA. (Information on employment is included in the *Action Guide*. The employment worksheets are in the *Supplement on Employment*.)

Like Section 504, Title II requires public entities to conduct a self-evaluation of policies and practices. If an entity has previously conducted a self-evaluation for Section 504, only programs not previously reviewed must be evaluated. However, because many Section 504 self-evaluations were conducted as long as ten years ago and programs tend to change, the U.S. Department of Justice regulations encourage public entities to conduct a comprehensive review of all current programs.

Title II is divided into two parts. Subtitle A covers all programs, services, and activities of state and local government and incorporates the employment requirements of Title I. Subtitle B covers public transportation entities that receive federal funds and extends these requirements to other public transportation systems. The *Action Guide* covers Subtitle A.

The 5–4–3 Approach to Implementation

The *Action Guide* presents a practical and manageable approach to compliance that entities can use to meet their administrative requirements as well as their ongoing goal of making all programs available to people with disabilities. This “5–4–3 approach” is an effective strategy that can be easily communicated and coordinated.

Five Action Steps

1. Designate a responsible employee
2. Provide notice of ADA requirements
3. Establish a grievance procedure
4. Conduct the self-evaluation
5. Develop a transition plan

Four Principles

1. Commitment from entity leaders
2. Coordination of compliance activities
3. Involvement of people with disabilities
4. Institutionalization of compliance procedures

Three Phases

1. Planning for compliance
2. Conducting the self-evaluation
3. Implementing modifications

Organization of the *Action Guide***CHAPTER 1: OVERVIEW OF TITLE II**

Chapter 1 discusses the legal requirements of the Title II regulations, including the requirements concerning general nondiscrimination, program accessibility, effective communication, and employment. Numerous examples are provided to illustrate the concepts and apply them to real-life situations. Citations to the Title II regulations are noted in the margins.

CHAPTER 2: ACTION STEPS

Chapter 2 summarizes the five administrative requirements public entities must address in order to bring themselves into compliance with the regulations. It includes a sample notice and grievance procedure.

CHAPTER 3: IMPLEMENTATION

Chapter 3 discusses the four principles of effective compliance and how they can be applied in the everyday workings of government. Examples are drawn from entities of various sizes, illustrating the three-phased approach to compliance that guides the public entity from planning through conducting a self-evaluation and carrying out structural and nonstructural modifications.

SELF-EVALUATION AND TRANSITION PLAN WORKSHEETS

The nine worksheets provide a structure for managing data-gathering and analysis and implementing each step of the compliance process. The completed worksheets form the basis for both the self-evaluation and the transition plan. (Note that the worksheets must be photocopied for use.)

RESOURCE INFORMATION

The *Action Guide* contains a bibliography and resource list to direct the reader to sources for further information and assistance.

The authors welcome your comments on the usefulness of the *Action Guide* and the worksheets. A user comment form is included at the end of the book. Your responses will be used in the preparation of future editions.

Chapter 1 • Overview of Title II

A thorough understanding of the requirements of Title II of the ADA, which applies to all activities and services of state and local government, is essential for public sector entities. This chapter will provide a road map to the contents of the law and the provisions of the regulations. Since this is a summary of the law and the regulations, readers should refer to the complete text of the regulations before undertaking specific compliance activities.

Basic Building Blocks of Title II

This section will define the basic terms and concepts of Title II, such as the definitions of *public entity*, *disability*, and *qualified individual with a disability*. Effective dates, enforcement, and defenses will also be discussed.

WHO MUST COMPLY WITH TITLE II?

A public entity covered by this section of the ADA is defined as:

- 1) any state or local government
- 2) any department, agency, special purpose district, or other instrumentality of a state or local government
- 3) certain commuter authorities and AMTRAK

28 C.F.R. §35.104

WHAT ACTIVITIES ARE COVERED?

Title II of the ADA prohibits discrimination against qualified individuals with disabilities by public entities. Activities covered include:

- the operation of all services and programs offered by the entity
- all aspects of the employment relationship
- government services carried out by contractors
- activities of state and local legislative and judicial branches
- public transportation

Commuter authority and AMTRAK requirements are not included in the *Action Guide*. Information regarding these requirements can be obtained from the Architectural and Transportation Barriers Compliance Board, the U.S. Department of Transportation, or the U.S. Department of Justice.

With the passage of the ADA, people with disabilities are for the first time assured of access to all publicly funded programs, services and agencies. Title II applies regardless of the size of the public entity. For example, a small rural police department that has three officers and a dispatcher is a public entity under Title II, as is a state agency with several hundred employees. In addition,

The Rehabilitation Act of 1973, 29 U.S.C. Sec. 791 *et seq.*, is a federal law that prohibits discrimination on the basis of disability. Section 501 of the Rehabilitation Act prohibits discrimination on the basis of disability in employment by federal agencies. Section 503 regulates employment practices of certain federal contractors. Section 504 applies to all programs receiving federal financial assistance and all operations of federal executive agencies.

the requirements apply regardless of the entity's source of funding, whether federal, state, or local.

Public entities that receive federal funds will be subject to the requirements of both the ADA and Section 504 of the Rehabilitation Act of 1973. State or local nondiscrimination laws may also regulate the activities of public entities. The ADA does not preempt those laws that offer protections that are the same or stricter (see page 12).

Many units of state and local government are recipients of federal financial assistance and are therefore covered by Section 504.

HOW IS DISABILITY DEFINED?

The ADA utilizes a three-pronged definition of disability. For the purposes of coverage under the ADA, a person with a disability is defined as an individual who:

- 28 C.F.R. §35.104
- 1) has a physical or mental impairment that substantially limits one or more major life activities; or
 - 2) has a record or history of such an impairment; or
 - 3) is perceived or regarded as having such an impairment.

28 C.F.R. §35.104

The phrase *major life activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The determination of whether or not an impairment substantially limits a major life activity is made on an individual basis, and is not based on the *existence* of a condition or impairment but rather by its *impact* on the individual. A substantial impairment will be found when the conditions, manner, or duration under which a major life activity can be performed by the individual are limited when compared to most people.

Example: One individual has hay fever that is a nuisance several weeks out of the year, during which time he takes an over-the-counter antihistamine but his activities are not curtailed in any significant way. He is not substantially limited in a major life activity and is not considered a person with a disability under the ADA. In contrast, another individual has severe allergies, including chemical sensitivity to multiple substances including substances that are used in the construction of walls in most buildings. She is unable to be out in public places without

experiencing severe and debilitating symptoms. She has a condition that substantially limits a major life activity and is therefore considered a person with a disability under the ADA.

Whether conditions of a limited duration are defined as disabilities will be determined on a case-by-case basis depending upon the extent to which the condition actually limits a major life activity and the expected duration of the impairment. Generally, an injury such as a broken leg will not be considered a disability. However, a serious leg break, where numerous surgeries and extensive rehabilitation will be necessary to regain normal function, substantially limits such major life activities as walking and caring for oneself, and, therefore, will be considered a disability under Title II.

1) The first prong of the definition of disability under the ADA includes conditions commonly regarded as disabilities because they are physical or mental impairments that substantially limit one or more major life activities.

Example: Sally is deaf. She is considered to be a person with a disability because she has a physical impairment that substantially limits the major life activity of hearing.

Example: Joe has paralysis as a result of a motorcycle accident. He is considered to be a person with a disability because he has a physical impairment that substantially limits the major life activity of walking.

Example: Doug has a moderate cognitive disability. He is considered to be a person with a disability because he has a mental impairment that substantially limits the major life activity of learning.

Other examples of individuals that fall within the first prong of the definition may include people who have arthritis, heart disease, cerebral palsy, multiple sclerosis, HIV (symptomatic or asymptomatic), alcoholism, or mental illness, when the condition substantially limits one or more major life activities. Physical characteristics, such as eye color, or environmental, cultural, or economic disadvantages are not considered to be physical or mental impairments. Age in and of itself is not an impairment.

Definition of Physical or Mental Impairment:

The regulations for Title II define the phrase *physical or mental impairment* to mean: (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 28 C.F.R. §35.104

2) The second prong of the definition of disability under the ADA protects people who have a history or record of an impairment that substantially limits a major life activity.

Example: Joan was successfully treated for breast cancer ten years ago. Although she is not disabled today, she is considered a person with a disability under the ADA, since she has a *history* of having a disability.

Example: David has a history of mental illness. He was hospitalized in 1990 for three months. He is considered to be a person with a disability and is protected under the ADA.

The second prong of the definition also includes individuals who are misclassified as having a disability:

Example: Maria speaks Spanish as her primary language. She is tested for placement purposes at the public school when she transfers into the school system in second grade. The test is given in English. Based on her test scores, she is placed in a special education classroom and labeled as having a moderate cognitive disability. She is protected as a person with a disability based on this misclassification.

3) The third prong of the definition of disability under the ADA includes people who are not, in fact, limited in any major life activity but are perceived or regarded as having a disability, sometimes because of myth, fear, or stereotype.

Example: Ann has facial scars as a result of serious burns. She has been repeatedly rejected for jobs as a waitress and receptionist because of her appearance. She is considered a person with a disability for purposes of this part of the definition.

The regulations do not attempt to provide an all-inclusive list of disabilities that are covered under the ADA. In part, this is a recognition of the fact that new conditions may be identified that would fall within the definition. (Consider AIDS, which was unheard of just fifteen years ago.) Such determinations must generally be made on a case-by-case basis.

EXCLUSIONS FROM THE DEFINITION OF DISABILITY

The term disability excludes the following conditions: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs. Moreover, the phrase *physical or mental impairment* does not include homosexuality or bisexuality; those orientations are not considered disabilities under the ADA.

28 C.F.R. §35.104

ILLEGAL USE OF DRUGS

Although drug addiction falls within the definition of disability in the ADA, a public entity may withhold services or benefits from a person who is *currently* engaging in the illegal use of drugs. By contrast, a person with a history of drug use who has been successfully rehabilitated or someone who is participating in a drug rehabilitation program and not engaging in the illegal use of drugs *is* protected. The use of methadone as a part of participation in a drug rehabilitation program is not an illegal use of drugs. Illegal use also does not include individuals who are taking controlled substances under a prescription.

28 C.F.R. §35.104

28 C.F.R. §35.131

There is a limitation on the withholding of services in two areas: *health care* and *drug rehabilitation* services cannot be denied to an individual on the basis of that person's current illegal use of drugs if the person is otherwise entitled to such service.

Alcohol is not a controlled substance; alcoholism is recognized as a disability under the ADA.

ASSOCIATIONAL DISCRIMINATION

The ADA extends its protections to people who do not have disabilities themselves but are discriminated against on the basis of their *association* with a person with a disability. The association can be with family members, friends, or any other person.

28 C.F.R. §35.130(g)

Example: Jill, a single parent, is denied a secretarial position at the local township office because the township supervisor is aware that she has a child who has cerebral palsy. The supervisor is concerned that her attendance will be unreliable because of the needs of her child. The parent is protected under the ADA.

Example: Kenneth is refused admittance to the city pool by a lifeguard checking passes because his roommate recently died of AIDS. He is protected under the ADA.

A person who experiences associational discrimination has the right to relief under the ADA (see page 11) but is not entitled to request reasonable accommodation in employment, as people who have disabilities themselves are entitled to do.

WHO IS A QUALIFIED INDIVIDUAL WITH A DISABILITY?

28 C.F.R. §35.104

29 C.F.R. §1630.2(m)

Protections under Title II of the ADA are specifically afforded to qualified individuals with disabilities. Not every person with a disability (someone who falls within the three-part definition) is a *qualified individual with a disability*. The definition of *qualified individual with a disability* takes two forms, depending on the type of Title II activity involved. For purposes of determining participation in the services and programs offered by a public entity, a person is considered to be qualified if the individual meets the essential eligibility requirements for the receipt of services or participation in programs. For purposes of employment, an individual is considered to be qualified if the person is able to perform the essential functions of the job with or without reasonable accommodation (see pages 25–28).

Example: Jean, who is hard of hearing, applies to a job placement program for single parents. Although she is a person with a disability, she is not a parent. Jean is not a qualified individual with a disability for purposes of receiving services under this program because she does not meet the essential eligibility requirement for participation (i.e., parenthood).

However, Denise, who has a visual disability and has two children, applies to the program. She is a person with a disability and she meets the essential eligibility requirements for participation in the program. Denise is a qualified individual with a disability under Title II.

DIRECT THREAT TO HEALTH OR SAFETY

28 C.F.R. §35.104

29 C.F.R. §36.208

If an individual poses a direct threat to the health or safety of others, he or she is not considered a qualified individual with a disability. Based on reliable information, this individual may be excluded from a public entity's program or service. A direct threat must be a significant risk to the health or safety of others that

cannot be eliminated or reduced to safe levels through the provision of auxiliary aids and services or the reasonable modification of policies or practices. The determination of the existence of a direct threat must be based on objective factual evidence and not stereotypes or misconceptions about a person's disability.

Factors to be considered in determining whether an individual poses a direct threat include: (1) the duration, nature and severity of the potential harm; (2) the likelihood the potential injury will occur; and (3) whether reasonable modification in policies, practices, or procedures will mitigate or eliminate the risk.

What Are the Effective Dates of Title II?

Title II became effective on January 26, 1992. Therefore, the requirements concerning the operation of programs and services and nondiscrimination in employment, discussed below, are already in effect. Title II also contains detailed provisions concerning accessibility requirements for publicly owned public transportation facilities and vehicles such as buses, subways, light rail and commuter rail systems that have varying effective dates. These sections of the ADA are not covered in the *Action Guide* (see Resources for information). Specific dates for compliance with particular requirements of Title II are discussed in Chapter 3.

How Is Title II Enforced?

Title II provides three methods of enforcement:

- 1) Individuals may **complain under the entity's grievance procedure**. (In order to encourage public entities to resolve disputes internally, the ADA requires that public entities with 50 or more employees establish an internal grievance procedure for the resolution of complaints. See Chapter 2.)
- 2) Individuals may **file administrative complaints with a designated federal agency** or with the U.S. Department of Justice. Administrative complaints must be filed within 180 days of the date the alleged discrimination occurred. (An extension may be allowed for good cause.) The reviewing agency will investigate the charge and, if it finds a violation, will seek to obtain a voluntary compliance agreement with the entity. If voluntary compliance is not achieved, the charge will be referred to the Department of Justice for enforcement.
- 3) Individuals have the right to **file a lawsuit** for injunctive relief and damages. The prevailing party in an administrative or court action may recover reasonable attorney's fees and related costs.

28 C.F.R. §35.107(b)

28 C.F.R. §§35.170–35.174

28 C.F.R. §35.190

42 U.S.C. §12133

28 C.F.R. §35.175

28 C.F.R. §35.134

An individual may choose to pursue any or all of these methods. It is not necessary to exhaust internal or administrative remedies before filing a court action. Individuals are protected from any retaliation or coercion when pursuing their rights or responsibilities under the ADA. (For more information on enforcement, including sources for information on Alternative Dispute Resolution, see page 33.)

28 C.F.R. §35.103

Relationship Between the ADA and State and Local Laws

The ADA does not supersede or preempt state or local laws that offer equivalent or greater protections. Public entities must evaluate the Title II requirements in light of state and local laws to ensure that the entity is in compliance with the stricter standard.

Example: In 1980, a state enacted a law requiring accessible design in all new construction and alterations. The law is implemented through a strict state access code that requires, among other things, that parking spaces designated for people with disabilities be 16 feet wide, an 8-foot space and an 8-foot access aisle. This requirement is stricter than the designated parking dimensions required under the ADA (8-foot space with 5-foot access aisle; 8-foot space with 8-foot access aisle for designated van parking). Both public and private entities in this state must comply with the stricter, 16-foot requirement.

Example: In 1985, another state enacted a building code that included some provisions requiring accessible features. However, the code contained no requirements concerning accessible entrances to buildings. This requirement is weaker than the entrances requirement of the ADA. Both public and private entities in this state must comply with the ADA standard for entrances.

OVERVIEW OF REQUIREMENTS FOR PUBLIC ENTITIES

The requirements of Title II fall into four broad areas:

- 1) general nondiscrimination requirements
- 2) equally effective communication
- 3) program accessibility
- 4) employment

Each of these key areas of the law is discussed here.

Title II also identifies steps that must be undertaken by public entities to comply with the ADA. These include designation of an employee to be responsible for ADA compliance, provision of

notice to the public about the terms of the ADA, establishment of an internal grievance procedure, and completion of a self-evaluation and transition plan. These steps are discussed in detail in Chapter 2.

1) General Nondiscrimination Requirements

The basic mandate of Title II is that no qualified individual with a disability shall be excluded from participation, denied benefits, services, or access to programs or activities, or be subjected to discrimination by any public entity. While this mandate is very broad, the following eight areas are specifically identified in the regulations.

28 C.F.R. §35.130(a)

EQUAL OPPORTUNITY

The ADA requires that people with disabilities are assured an equal opportunity to participate in the programs and activities offered by state and local governmental units. This right includes not only the opportunity to participate but also an opportunity that is equally effective. Although an entity can provide separate benefits or services, it should do so only where necessary to provide an equal opportunity. Separate benefits or services should be delivered in the most integrated setting appropriate.

28 C.F.R. §35.130(b)(1)(i)–(iv),(vii)

Example: Jane, who is deaf, is seeking a variance from the city zoning board. If she does not have access to what is said, she does not have an equal opportunity to benefit from attending the public zoning board meeting. Therefore, an effective means of communication, such as a sign language interpreter, must be provided.

Equal opportunity can be best assured by including people with disabilities in planning and decision-making. People with disabilities should be encouraged to participate as members of government planning and advisory boards.

28 C.F.R. §35.130(b)(1)(vi)

INTEGRATED PROGRAMS

Services and programs must be delivered in the most integrated setting appropriate to the person's level of need even if separate programs exist. Included under this requirement is the principle that integration of people with disabilities is the goal of the law. An entity cannot require that an individual participate in the separate program; a person with a disability cannot be restricted from participating in general activities and must be given the choice of which public activities to participate in.

28 C.F.R. §35.130(b)(2);(d)

Example: A city parks and recreation department offers particular programs for people with disabilities, such as adaptive exercise and wheelchair basketball, in addition to an extensive selection of other aerobics and sports classes. Dave, an individual with a mobility disability, cannot be excluded from an aerobics class because of the availability of an adaptive exercise class.

METHODS OF ADMINISTRATION

28 C.F.R. §35.130(b)(3) A public entity may not use official written policies that are discriminatory or engage in actual practices that are discriminatory. This prohibition includes direct actions by the entity, actions undertaken on behalf of the entity under a contractual relationship and actions by another Title II entity (if subject to common administrative control such as departments within a city government structure that all report to the mayor).

Discriminatory policies and practices include those that are explicitly exclusionary, such as a policy or practice of a state mental health agency that no community-based mental health services will be provided to people who are deaf or hearing impaired. Also included are policies that appear neutral but have a discriminatory effect. For example, a policy requiring a driver's license as proof of age for participation in a community college adult education program has the effect of discriminating against people who are unable to obtain a driver's license because of their disability.

CHOICE OF CONTRACTORS

28 C.F.R. §35.130(b)(5) Public entities cannot use criteria that discriminate against qualified individuals with disabilities in the selection of procurement contractors.

Example: A county hospital cannot refuse to contract with a cafeteria management service because the company employs people who have cognitive disabilities.

LICENSING AND CERTIFICATION

28 C.F.R. §35.130(b)(6) Many government entities have responsibility for licensing or certification of individuals such as nurses, doctors, social workers, architects, beauticians, realtors, and day care providers. A qualified individual with a disability cannot be denied licensure or certification if the person meets the essential eligibility requirements for the task involved. Whether or not particular requirements are

essential must be determined on a case-by-case basis. This requirement also applies when a public entity contracts with a private entity to handle licensing and certification responsibilities.

Where public entities administer licensing examinations, the examinations must be offered in an accessible place and manner, including the provision of auxiliary aids.

In addition, public entities may not establish requirements for programs that are certified or licensed, such as a day care facility or community based mental health clinic, that have the effect of limiting opportunities for participation or employment of people with disabilities.

Example: The state agency that oversees the Day Care Facility Licensing Act has a policy requiring day care center staff to be physically mobile. This policy discriminates against teachers with mobility-related disabilities. Such policies must be revised to eliminate discriminatory standards.

However, this requirement does not impose on the public entity the responsibility to regulate the activities of privately-run programs that are merely licensed by the government. Such activities are regulated under Title III of the ADA.

REASONABLE MODIFICATION OF POLICIES, PRACTICES, AND PROCEDURES

Policies, practices and procedures of a public entity must be modified when necessary to avoid discrimination against people with disabilities, unless to do so would fundamentally alter the nature of the service, program, or activity.

28 C.F.R. §35.130(b)(7)

Example: A state office building that contains an application office for small business/entrepreneur grants has a “no animals” sign on the door. An individual who is accompanied by a service animal (previously referred to as a seeing-eye, hearing-ear, guide or support dog) is denied access to the building by a security guard. The “no animals” policy must be modified to permit access to a person accompanied by a service animal.

Example: A city payroll office routinely asks employees picking up their paychecks to show their state driver’s license. An alternative form of identification must be accepted from individuals who

are not qualified to get a driver's license, such as an individual who has a visual disability.

ELIGIBILITY CRITERIA

28 C.F.R. §35.130(b)(8) Public entities cannot use eligibility criteria that screen out or tend to screen out people with disabilities unless such eligibility criteria are necessary for the provision of the service, program or activity.

Example: A city adult education program requires people who have mobility disabilities to be accompanied by an attendant in class. This eligibility criterion is discriminatory.

Neutral rules such as legitimate safety qualifications are permitted even when the effect is to screen out people with disabilities.

Example: A minimum level of vision is acceptable as an eligibility criterion for obtaining a driver's license.

SURCHARGES

28 C.F.R. §35.130(f) It is not permissible for a public entity to assess a surcharge on people with disabilities to offset the costs associated with providing access.

Example: A recreation department offers a course in Chinese cooking and charges all members of the public a \$30 fee. Angela, who is deaf, requests that a sign language interpreter be provided for her. The department plans to charge Angela \$130 for the fee and the interpreter costs. This is not permitted under the ADA. Angela's fee can be no more than the \$30 charged all other program participants.

However, in some instances, where providing auxiliary aids would impose undue financial and administrative burdens in light of all available resources, it may be permissible for the public entity to pay only part of the cost of the auxiliary aids.

2) Equally Effective Communication

28 C.F.R. §35.160(a) Public entities are required to ensure that applicants, participants, and members of the general public with disabilities have communication access that is equally effective as that provided to people without disabilities. One purpose of this requirement is to ensure access to general information.

Example: A recreation department is sending information regarding summer recreation programs to all members of the community. This general public information should be made available in accessible formats, such as large print, cassette recording, and Braille, for access by people who have visual disabilities.

In order to be in compliance, entities are also required to provide specific communication access in the form of auxiliary aids and services upon the request of a qualified person with a disability. Auxiliary aids include services, equipment, or devices that provide effective communication access to people with disabilities (see Chapter 3, page 64, for more detailed information). A qualified sign language interpreter for an individual who is deaf is one example of an auxiliary service. For people who have visual disabilities, materials in accessible formats such as large print, audio cassette, or Braille, and the provision of print scanners or readers are all examples of auxiliary aids. Other technologies may emerge in the future that will be considered acceptable methods of compliance as long as the standard of effective communication is met.

28 C.F.R. §35.160(b)(1)

In choosing an auxiliary aid or service, primary consideration shall be given to the aid or service requested by the individual, unless the public entity can show that another equally effective means of providing access is available or that the request would result in a fundamental alteration of the service, program, or activity or create undue administrative or financial burdens.

28 C.F.R. §35.160(b)(2)

Example: In response to the recreation department announcement described above, a person who has a visual disability enrolls in a ceramics class and requests that the class materials, including a large manual, be provided in Braille. The department determines that the manual cannot be reproduced in Braille in time for the first class. The department offers to have a staff person record the text of the manual on audio tape, since this can be completed before the class begins.

INTERPRETER SERVICES

The term *qualified interpreter* is defined as an individual who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In most situations, it is not appropriate to use a family member or companion as an interpreter. The person with the disability has the right to request an impartial interpreter. Public entities are responsible for providing interpreter services upon request

28 C.F.R. §35.104

unless doing so would cause a fundamental alteration or undue burden. Other auxiliary aids for people who have hearing impairments include real-time captioning and open and closed captioning. Consideration must be given to the circumstances and the technologies available to determine what constitutes effective communication.

One commonly asked question is when an interpreter is required. Although a notepad and pen for written communication may be sufficient for simple conversations, an interpreter may be necessary where the information is complex or the exchange is lengthy. Factors to consider include: (1) the context of the event; (2) the number of people involved; and (3) the importance of the material being communicated.

Example: A patient who is deaf is discussing medical treatment options with a team of doctors at a county hospital. In this situation the importance of the material being communicated indicates that an interpreter is needed.

Example: A participant in a safe driving program orders lunch at the state building cafeteria. The person, who is deaf, is unable to lipread and generally communicates in American Sign Language. For this short exchange with cafeteria employees, a pen and paper suffice to ensure effective communication.

PUBLIC TELEVISION

28 C.F.R. §35.160(*Preamble*) A public entity producing television programs or videotapes is required to ensure communication access. One means of doing so is through closed captioning.

TELEPHONE COMMUNICATIONS

28 C.F.R. §35.161 Where public entities engage in telephone communications with the public, equally effective communication with people with disabilities, including hearing and speech disabilities, must be provided. Use of a TDD or the relay service is an appropriate means of ensuring access for people who have speech or hearing disabilities. (Telecommunication relay services enable voice telephone users and TDD telephone users to communicate through a third party operator. Title IV of the ADA requires that such services be available nationwide no later than July 26, 1993.) If a TDD is installed, be sure that all employees who handle incoming calls are trained in its proper use (see Chapter 3, page 81).

EMERGENCY TELEPHONE SERVICES

Governmental units that provide direct telephone access to emergency services, such as police and fire departments, must have a TDD. For emergency services, reliance on the relay service is not considered to be an acceptable alternative. Emergency services providers are also encouraged, but not required, to provide their 911 operators with a voice amplification device in the telephone handset so that efforts of a hard of hearing person to communicate on the telephone can be assisted if necessary.

*28 C.F.R. §35.162***GENERAL INFORMATION**

General information, such as the availability and location of accessible services, activities, and facilities, must be provided by all public entities. This requirement specifically includes directional signage at inaccessible entrances indicating where an accessible entrance is located and signage indicating where portable TDDs or TDD pay phones are located.

*28 C.F.R. §35.163***3) Program Accessibility**

The standard against which programs and services are measured for the purposes of ADA compliance is one of overall program accessibility: Is the program, service, or activity, when viewed in its entirety, readily accessible to and usable by individuals with disabilities?

ACCESS TO EXISTING FACILITIES

The ADA states that people with disabilities cannot be excluded from the programs, activities, or services offered by a public entity because of inaccessible facilities. Although this is a rigorous requirement, the law permits a public entity some flexibility in how the standard can be met, by allowing both structural and nonstructural methods of achieving program accessibility, such as:

28 C.F.R. §35.150(a)(1);(b)(1)

- 1) **Reassignment of services to an accessible location if the facility is not accessible.** For example, a legislator may have her local district office on the second floor of a three story walk-up building. A person who uses a wheelchair would be unable to visit the senator at her office to lobby her on a particular issue. The legislator could arrange to meet the individual at another, accessible location.
- 2) **Home visits.** A person with a disability may be unable to enter his local city collector's office in order to obtain a neighborhood resident parking sticker because it has a flight of steps at the main entrance. A city worker could meet the individual at

his home to process the necessary application forms and obtain other required information, or application by mail could be permitted.

- 3) **Purchase or redesign of equipment.**
- 4) **Assignment of aides to beneficiaries.**
- 5) **Structural changes to eliminate barriers.** Making structural accessibility improvements to an existing facility is one means of achieving program accessibility. However, it is not required if there are alternative means of achieving program accessibility, such as those described above.

Example: A state family services office is located in the second story of an old house. A couple seeking to be approved as foster parents cannot enter the office for the interview phase of the process because the husband uses a wheelchair and there is no elevator, lift, or ramp. One means of achieving program accessibility is to conduct the meeting at an alternative, accessible location. Another means is to provide facility access through the installation of a ramp, elevator, or platform lift if permitted by the facility design.

28 C.F.R. §35.150(c) **However,** if there is no alternative means to achieve program accessibility, structural changes will be necessary, unless to do so would impose undue burdens on the entity. Any needed structural changes were to have been made by January 26, 1995.

28 C.F.R. §35.150(b)(1) A program will be viewed in its entirety for purposes of determining compliance with the program accessibility standard. A public entity is not necessarily required to make each of its existing facilities accessible if alternative, accessible locations are available.

Example: A state agency operates five local offices in the downtown area. Two of the offices are in facilities that are accessible, three are on the second floor of two-story walk-up buildings and are inaccessible to people who cannot climb stairs. If the same services and programs are available in the accessible offices, the agency does not need to make any structural changes at the remaining sites.

However, in a large city where long distances between facilities create barriers to program accessibility, structural changes may be necessary at additional sites in order to achieve program accessibility.

Structural changes may range from the installation of grab bars in an accessible bathroom stall or installation of a ramp over two steps at the building entrance to more extensive alterations. Note that it is *not* acceptable to carry an individual in a wheelchair into a facility as a means of achieving program access; nor is carrying a permissible alternative to installation of a ramp or lift. There may on rare occasion be manifestly exceptional circumstances where carrying is permitted but this is limited to situations where structural modification is prohibitively expensive or impossible, such as on some oceanographic vessels.

FUNDAMENTAL ALTERATION AND UNDUE BURDENS

A public entity is not required to take any action that will result in a fundamental alteration to the program, service, or activity or create undue administrative or financial burdens. If achievement of overall program accessibility causes undue financial or administrative burdens on the entity or fundamentally alters the program or service, alternative means of achieving compliance must be sought to ensure that people with disabilities can participate in or receive the benefits of the program or activity.

28 C.F.R. §35.150(a)(3)

Providing program accessibility is not expected to result in undue burdens for most public entities. All resources of the public entity available for use in the funding and operation of the program must be considered. Any decision that achieving program accessibility would result in a fundamental alteration or create undue burdens must be made by the head of the entity or other senior official who has budgetary and spending authority or a staff person designated by that official. The reasons for such a decision must be presented in writing.

HISTORIC PRESERVATION PROGRAMS

Buildings that are eligible for listing in the National Register of Historic Places or designated as historic under state or local law are treated as a special case under the ADA. These programs are not required to take any action that would threaten or destroy the historic significance of the property.

28 C.F.R. §35.104

It is important that historic preservation programs whose primary purpose is for visitors to experience the historic site itself (as opposed to other types of programs that happen to be housed in historic buildings) make every effort to make the facility physically accessible. Where it is not feasible to provide physical access

28 C.F.R. §35.150(a)(2)

28 C.F.R. §35.150(b)(2)

without threatening or destroying the historic significance of the property, alternative methods of achieving program access must be employed. Note that when alterations *are* planned in historic buildings, they should refer to the specific access requirements and procedures for historic buildings provided by the applicable design standards for Title II (see “New Construction and Alterations in Existing Facilities,” below).

Distinction Between Facility Access Requirements for Title II (Public Services) and Title III (Public Accommodations)

The requirements for structural changes in existing public facilities owned or operated by public entities under the program accessibility standard are markedly different from the requirements for privately owned places of public accommodation. Under Title III, all existing privately owned or leased facilities open to the public must make structural changes that are *readily achievable*, that is, easily accomplishable and able to be carried out without significant difficulty or expense. Under Title II, physical modifications are necessary only when there is no other way to make the program accessible.

Example: A fast food restaurant chain operates ten restaurants in the downtown area. Each facility has the same design, with a step up from the dining area to the service counter. Under Title III, each restaurant may be required to install a ramp to provide access to the service counter, if doing so is readily achievable.

28 C.F.R. §36.304

28 C.F.R. §35.150(b)(1)

NEW CONSTRUCTION AND ALTERATIONS TO EXISTING FACILITIES

28 C.F.R. §35.151(a)–(c)

All new construction and alterations to existing facilities must be readily accessible to and usable by people with disabilities. Specific accessibility standards for public entities will be issued in the future. Until those regulations are promulgated, construction and alteration of public facilities must be built in accordance with one of two existing accessibility standards: the ADA Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS). The ADA Accessibility Guidelines are the technical design standards issued under Title III of the ADA for new construction and alterations of privately owned places of public accommodation and commercial facilities.

Entities covered by Title II can elect to follow ADAAG with one significant exception: the treatment of elevators. In the private sector, facilities of less than three stories or less than 3000 square feet per floor are not required to provide an elevator unless the facility is a medical office or shopping mall, or falls into a category of facilities that may be identified by the U.S. Attorney General (currently certain transportation facilities). Under Title II, however, public sector entities cannot use the elevator exemption under any circumstances.

28 C.F.R. §35.151(c)

Alternatively, Title II entities may elect to follow UFAS. These access standards were adopted by various federal agencies to implement the Architectural Barriers Act of 1968. They also have been adopted by most federal agencies as the standard for Section 504 of the Rehabilitation Act of 1973. Both UFAS and ADAAG are based on model design standards generated by the American National Standards Institute and, as a result, are quite similar.

28 C.F.R. §35.151(a)–(c)

Facilities under design as of January 26, 1992 are covered by this requirement if bids were solicited after the effective date.

Departures from the ADAAG or UFAS requirements are permitted if equivalent access is achieved.

LEASES

The Title II regulations recommend but do not require that public entities try to lease accessible space. Facilities that are leased by a public entity are subject to the overall program access standard. If a public entity leases inaccessible space, the entity is still responsible for ensuring that the programs and services it offers are accessible.

28 C.F.R. §35.151(Preamble)

Commentary to the regulations suggests that public entities attempt to locate space that complies at a minimum with the federal requirements for leased buildings under the Architectural Barriers Act. The three elements of that standard are: (1) an accessible route from the entrance to the principal activity area; (2) accessible bathrooms; and (3) designated parking for individuals with disabilities if parking is provided. 36 C.F.R. §1190.34

MAINTENANCE OF ACCESSIBLE FEATURES

Maintenance of accessible features is specifically required as a means of insuring that ongoing access is provided. For example, accessible doors (e.g., leaf doors adjacent to a revolving door) cannot be locked or blocked. When temporary breakdowns of equipment such as elevators occur, repairs must be made promptly. Where improper or inadequate maintenance causes repeated and persistent failures of mechanical features, this requirement is violated.

28 C.F.R. §35.133

4) Employment

This section provides an overview of the requirements contained in Title I of the ADA covering private sector employment. These requirements apply to certain Title II entities (see “Effective Dates for Public Employers,” below).

WHO IS COVERED?

28 C.F.R. §35.140(a)

29 C.F.R. §1630.2(e)(1)

Effective January 26, 1992, Title II prohibits all public entities, regardless of the number of employees, from discriminating against qualified individuals with disabilities in employment. The term *employees* includes part-time employees, if such workers are employed for twenty or more calendar weeks in the current or preceding calendar year.

Effective Dates for Public Employers

28 C.F.R. §35.140(b)(1),(2)

Title I of the ADA applies to all private or public employers who have fifteen or more employees, including part-time employees, employment agencies, labor unions, and joint labor-management committees. For employers with twenty-five or more employees, coverage began July 26, 1992. For employers with fifteen or more employees, coverage began July 26, 1994. Title II of the ADA applies the Title I regulations to most public entities, effective January 26, 1992.

29 C.F.R. §1630.2(j)(3)(i),(ii)

For purposes of employment, the definition of disability (discussed on pages 6–8) also includes a substantial impairment in the major life activity of working. The phrase *substantially limited in working* is defined as “significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes compared to the average person with similar training, skills, and abilities.” It is not applicable to the inability to perform a particular job or a very specialized job. Individuals who are totally unable to work are not included. Factors to be considered in determining whether a person with a disability is substantially impaired in the major life activity of working include:

- 1) the type of job from which the individual has been disqualified because of the impairment
- 2) the geographical area in which the person may be reasonably expected to find a job

- 3) the number and types of jobs using similar training, knowledge, skill, or abilities from which the individual is disqualified within the geographical area, and/or
- 4) the number and types of other jobs in the area that do not involve similar training, knowledge, skills, or abilities from which the individual also is disqualified because of the impairment

If an individual is substantially limited in any other major life activity (e.g., walking or seeing) it is not necessary to determine whether the person is limited in the major life activity of working.

WHAT IS COVERED?

The basic mandate of the employment regulations is that an employer cannot discriminate against an employee on the basis of disability in any aspect of the employment relationship. The activities covered include the application process, testing, interviewing, hiring, assignments, evaluation, discipline, medical examinations, compensation, promotion, on-the-job training, layoff/recall, termination, leave, and benefits such as health insurance.

29 C.F.R. §1630.4

QUALIFIED INDIVIDUAL WITH A DISABILITY

A *qualified individual with a disability* in employment is a person who has the skill, experience, and education for the job and can perform the essential functions of the job with or without reasonable accommodation. (The definition and scope of reasonable accommodation are discussed in “Reasonable Accommodation: The Employer’s Responsibility,” page 26).

29 C.F.R. §1630.2(m)

Example: A state agency is hiring for a position as a certified public accountant. Jean, who has a psychiatric disability, applies for the position. She has some bookkeeping experience, but she is not an accountant. The agency can reject Jean because she is not qualified for the position.

However, Lisa, who has a visual disability, applies for the position. She is a certified public accountant and can perform all essential job functions. Lisa is qualified for the position.

ESSENTIAL FUNCTIONS OF THE JOB

The term *essential functions* refers to the fundamental elements of a job. The term does not include the marginal functions of the position. Factors to be considered in determining whether a job

29 C.F.R. §1630.2(n)(1)

function is essential include: (1) whether the reason the position exists is to perform the function; (2) whether a limited number of employees are available among whom performance of the job function can be distributed; and (3) the degree of specialization required to perform the task. An individual with a disability is considered qualified for the position if he or she can perform the essential functions of the job with or without reasonable accommodation.

29 C.F.R. §1630.2(n)(2)

Evidence that may be considered in determining whether a particular job function is essential:

- written job descriptions prepared before advertising or interviewing applicants
- terms of a collective bargaining agreement
- percentage of time spent performing the function
- work experience of past employees in the job
- work experience of current employees in the same or similar jobs
- consequences of not requiring that the function be performed
- employer's judgment

Example: A city is hiring for the position of secretary to the City Manager. Dorothy, who has multiple sclerosis and uses a wheelchair, meets all of the qualification standards in terms of experience, education, and related skills. 70% of the job involves typing, 25% is telephone work, and 5% is filing. There is a file clerk who handles the bulk of the filing duties. The office has a system of upright files and Dorothy is unable to reach the two top drawers from her wheelchair; however, she can perform all other job duties. Since she has the requisite skills and education and she can perform the essential functions of the job, and the filing task is a marginal function, Dorothy is qualified for the position.

29 C.F.R. §1630.9(a),(b)

REASONABLE ACCOMMODATION: THE EMPLOYER'S RESPONSIBILITY

Employers are required to make reasonable accommodations for applicants and employees with disabilities upon their request. Although the term *reasonable accommodation* is derived from the regulations for the Rehabilitation Act of 1973, it was never formally defined; instead, the meaning of the term was developed through case law and administrative findings. Based on these interpretations, the ADA regulations define the term as modifications or adjustments to a job application process, work environment, or the way in which a job is customarily performed or benefits

provided that enable a qualified individual with a disability to be considered for the position, perform the essential functions of the job or enjoy the benefits of employment in the same manner as other employees.

29 C.F.R. §1630.2(o)(1)

29 C.F.R. §1630.2(o)(2)(i),(ii)

Types of reasonable accommodations include:

- 1) **part-time or modified work schedules.** Example: Denise, who has a kidney disorder, needs to leave work two hours early every Friday to go for dialysis. She arrives one hour early on Thursday and Friday mornings to make up the time.
- 2) **job restructuring.** Example: Felix, who had his left arm amputated as a result of an accident, has returned to work at his Forestry Department job using a prosthesis. He is able to perform all of the essential job functions of his former position except for the operation of one piece of machinery that requires a fine motor grasping motion. Since Felix always works as part of a crew, the duties among the crew are reassigned so that other workers perform that task.
- 3) **job reassignment.** Example: Bob worked as a nursing home inspector for the City Department of Aging. After a serious car accident in which he suffered a traumatic brain injury, Bob is unable to drive and is therefore no longer able to perform the frequent site inspections required of the inspector position. There is no reasonable accommodation that would enable Bob to perform the essential function of driving in the inspector position and he rejects the option of working with a driver. A job reassignment is offered as a reasonable accommodation. There are no vacant positions offering an equivalent salary for which Bob is qualified. The City offers him a position at a slightly lower salary reviewing field reports at city hall. Bob accepts the new job.
- 4) **provision of auxiliary aids and services.** Example: Tina is a senior staff member in the City Department of Health. She is deaf and, although she is an excellent lipreader in one-to-one communication settings, she needs the assistance of a sign language interpreter for group meetings and to handle her telephone work. The City contracts with an interpreter to work with Tina for twenty hours per week. Tina arranges her schedule so that her meetings and telephone work are scheduled for the times the interpreter is present.
- 5) **modifications to a job site or work site.** Example: Peter, who uses a wheelchair, is hired as an assistant attorney general by a state government. He is unable to enter the office building

where he is assigned, which has two steps between the lobby entrance and the elevators. He is also unable to sit comfortably at his desk because it is too low to the floor. The Attorney General's office constructs a ramp in the lobby to provide an accessible route for Peter. His desk is raised on concrete blocks to accommodate the height of his wheelchair.

The requirement to provide reasonable accommodations does not include providing personal aids or services to assist an individual in daily activities on or off the job, such as wheelchairs, glasses, prostheses, or assistance in toileting or feeding.

CHOOSING THE ACCOMMODATION

29 C.F.R. §1630.9(d)

The employer's responsibility for providing an accommodation is triggered only when an individual with a disability makes such a request. Many employees with disabilities do not need accommodations. For others, the need for accommodation may be obvious. If an employee with a known disability is having difficulty performing the job without an accommodation, the employer may ask the employee whether he or she is in need of an accommodation. A qualified individual with a disability is not required to accept an accommodation. However, if such a person rejects a reasonable accommodation and cannot then perform the essential functions of the job, the person may no longer be considered qualified for the position.

Once the applicant or employee has requested an accommodation, sufficient information from the applicant or employee must be gathered to determine the type of accommodation necessary to enable the individual to perform the job. In most instances the person with a disability is in the best position to identify what is needed. Additional information from qualified experts may be gathered, if necessary. The vast majority of accommodations are not costly. An employer need not provide the requested accommodation if an alternative, less costly but equally effective means of accommodation is available. The employer is required, however, to provide an accommodation that permits a qualified individual with a disability to attain the same level of job performance as co-workers with similar skills and abilities.

THE COUNTERBALANCE: UNDUE HARDSHIP

At what point does a requested accommodation become unreasonable? If a requested accommodation imposes an undue

hardship on the employer, it need not be provided. However, consideration must be given to whether another accommodation exists that would not result in an undue hardship for the entity. *Undue hardship* is defined as an action requiring *significant* difficulty or expense. Factors that should be considered in determining whether a requested accommodation poses an undue hardship include:

- the nature and cost of the accommodation
- the overall financial resources of the facility, number of employees at such facility and the effect on expenses and resources
- the overall financial resources and size of the employer including the number of employees and the number, type, and location of its facilities
- the type of operation including composition, structure, and functions of the work force, geographic separateness, and administrative or fiscal interrelationship
- the impact of the accommodation on business operations

Example: It may pose an undue hardship for a rural school district with one secretary and three teachers to purchase a print scanner and Braille keyboard for a secretary who is visually impaired. Making that same accommodation in the state education agency main office which has several hundred workers, however, may be reasonable. The decision as to whether a requested accommodation poses undue hardship must be made and reviewed on a case-by-case basis.

If employees are governed by a collective bargaining agreement, the terms of that agreement may have an impact on whether or not a requested accommodation creates an undue hardship. For example, if a person becomes severely disabled after a car accident and can no longer perform the essential functions of the job with reasonable accommodation, job reassignment may be a possibility. However, if the collective bargaining agreement reserves certain jobs for employees with a given amount of seniority, and if the individual does not have seniority, this may be a factor in determining whether it would be an undue hardship to reassign him or her to a vacant job. The interrelationship between the terms of a collective bargaining agreement and the responsibility of employers to provide reasonable accommodation is a complex issue where litigation is likely to occur. Specific situations will be resolved on a case-by-case basis.

29 C.F.R. §1630.2(p)(1)

29 C.F.R. §1630.2(p)(2)

SPECIFIC ISSUES IN EMPLOYMENT

29 C.F.R. §1630.10, §1630.11

Qualification standards means “the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired.” 29 C.F.R. §1630.2(q)

Qualification Standards and Selection Criteria

The use of qualification standards, job tests, or selection criteria that screen out, tend to screen out, or otherwise deny a job or benefit to an individual with a disability are permissible only where such standards, tests, or criteria are job-related. *Job-related* means related to the actual performance of the essential functions of the job and consistent with business necessity where such performance cannot be accomplished by reasonable accommodation.

Example: An employer may continue to use a typing test that excludes individuals who type less than sixty words per minute if typing is an essential function of the job and sixty words per minute is the expected level of performance for employees in the job category.

However, even where the qualification standard is job-related and consistent with business necessity, employers must consider whether there are reasonable accommodations that would enable an individual to perform at the expected level, such as a magnification screen overlay on a computer screen as an assistive device for someone who is visually impaired.

29 C.F.R. §1630.13

Pre-Employment and Medical Inquiries

The ADA prohibits pre-offer inquiries regarding the existence of an applicant’s disability or the nature and severity of the disability and prohibits pre-offer medical examinations or inquiries. This requirement is an attempt to address the historic rejection of people with disabilities before consideration of the individual’s merits, based on myth or misconception about their disability.

29 C.F.R. §1630.14(a)

Pre-offer inquiries must be limited to questions concerning the ability of the applicant to perform the functions of the job. Blanket questions such as “Do you have a disability?” or “How many times have you been hospitalized in the last five years and for what?” are not permissible. Questions concerning an applicant’s workers’ compensation claims history is also prohibited at the pre-offer stage. Employers may ask all applicants whether they can perform the functions of the job with or without reasonable accommodation. Employers may also ask an individual with a known disability to describe or demonstrate how functions of the job will be performed. (Reasonable accommodation must be provided for

the demonstration if needed.) Agility tests are not considered medical inquiries and are permissible at the pre-offer stage.

Post-Offer Inquiries and Confidentiality

After an offer of employment has been extended, it may be conditioned on the results of a medical examination if all individuals in the same job category are examined and if the information obtained is kept confidential. Medical inquiries at this stage of the employment process are unrestricted. However, there are limitations on how medical information gathered at this stage may be used. If the results of the medical examination are used to screen out applicants with disabilities, such criteria must be job-related and consistent with business necessity.

29 C.F.R. §1630.14(b)

Example: Joe is applying for a position as a clerk-typist with a city agency. The essential functions of the position are typing and answering the telephone. The city requires all applicants to undergo a post-offer, pre-placement physical. The medical history portion of that examination discloses that Joe has a psychiatric disability. Joe cannot be rejected on the basis of his disability since that is not a criterion that is job-related or consistent with business necessity.

Employers must also consider whether there are reasonable accommodations that would enable the individual to perform the essential functions of the job.

Example: Cathy is also an applicant for the clerk-typist position. Cathy has carpal tunnel syndrome, an inflammatory disease that affects the wrists, typically as a result of extensive repetitive motion. The findings of the medical examination conclude that she will be able to perform the essential function of typing if provided with two accommodations: wrist supports for use while typing and adjustment of the height of her desk chair to ensure proper typing posture to reduce stress on her wrist joints. These accommodations do not create an undue administrative or financial burden for the city.

Employers are required to maintain a medical file separate from an employee's personnel file to ensure against unwarranted disclosure of the person's disability. Although confidentiality is to be maintained, an employer may inform supervisory personnel about an individual's medical restrictions or necessary accommodations, and first aid or safety personnel may be informed if

29 C.F.R. §1630.14(d)(1)

special treatment or evacuation assistance may be necessary. Disclosure is also permitted to: (1) government officials investigating compliance with the ADA or other relevant laws; (2) state workers' compensation or second injury fund offices; and (3) employer's health or life insurance companies.

"ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations," was issued in October 1995 by the Equal Employment Opportunity Commission (EEOC) to clarify these ADA provisions. It is available from the EEOC or your regional Disability and Business Technical Assistance Center (see Resources).

Drug Testing

- 29 C.F.R. §1630.16(c)(1) The ADA does not require or prohibit testing employees for illegal use of drugs. Any information obtained from such tests that indicates a condition other than whether the individual is currently engaging in the illegal use of drugs, such as the presence of a prescription medication to control a particular disability, must be treated as confidential medical information. The employer can
- 29 C.F.R. §1630.16(c)(3) test at any stage of the employment process.

Direct Threat to Health or Safety

- 29 C.F.R. §1630.2(r) An employer is not required to hire or continue to employ an individual who poses a *direct threat* to the health or safety of the individual or others. The direct threat standard is a strict one; the term is defined as a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced through reasonable accommodation. Speculative or remote risks are not sufficient to constitute a significant risk under this provision. Moreover, the determination of whether an individual poses a direct threat must be based on the most current medical knowledge and/or objective, factual evidence concerning the individual, and not on generalizations or stereotypes. The assessment must consider the ability of the individual to perform safely the essential functions of the job.

Example: An employer could not refuse to hire for a secretarial position an individual who has tested positive for the HIV virus based on the fears or prejudices of the employer or other employees.

A specific provision applies the direct threat analysis to food handlers with infectious or communicable diseases. The Secretary of the U.S. Department of Health and Human Services is responsible for generating a list of infectious and communicable diseases that are transmitted by food handling. If a person with a disability has one of these diseases and there is no reasonable accommodation that can eliminate the risk, the employer can refuse to hire the applicant or can reassign an incumbent.

29 C.F.R. §1630.16(e)

Discriminatory Contracts

Employers cannot utilize contracts that have the effect of discriminating against applicants or employees. Examples of entities with which one might contract include employment referral services, training programs, labor unions, and organizations providing fringe benefits to employees.

29 C.F.R. §1630.6

Enforcement and Remedies

Both administrative and judicial enforcement and remedies are available for complaints of employment discrimination (see “How Is Title II Enforced?” page 11). Administrative enforcement is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). As with other administrative complaints filed under Title II, complaints of discrimination must be filed within 180 days of the alleged discriminatory act. The EEOC is responsible for reviewing complaints, determining whether the facts support a finding of discrimination, and determining the appropriate remedy. Remedies may include back pay, front pay, job reinstatement, hiring, and restoration of benefits.

42 U.S.C. §12117, §12133

28 C.F.R. §35.170

Remedies may include injunctive relief and compensatory and punitive damages. Punitive damages are available against private employers under Title I for instances of intentional discrimination. However, such damages are not available against public entities.

Civil Rights Act of 1991

42 U.S.C. §1981(a)

42 U.S.C. §1981(b)(1)

Judicial enforcement can occur as an outgrowth of the administrative process or pursuant to an individual’s right to file a private lawsuit under Title II.

Although the ADA provides a number of formal mechanisms for filing and resolving complaints, the ADA strongly encourages the use of alternative means of dispute resolution, including facilitation, mediation, factfinding, minitrials, arbitration, and others. Contact your Disability and Business Technical Assistance Center

29 C.F.R. §1630.15

for information on ongoing training sessions on Alternative Dispute Resolution (ADR) and materials developed by the Better Business Bureau (see Resources). Practical information can also be found in *Getting to Yes* and other books (see Bibliography).

Defenses

The regulations identify five defenses to a charge of employment discrimination on the basis of disability. The list is not intended to be exhaustive.

- 1) **Disparate treatment.** Disparate treatment means treating an individual differently on the basis of disability. A defense to such a charge is that the alleged actions were based on legitimate, nondiscriminatory reasons that are not pretextual, such as unsatisfactory job performance.
- 2) **Disparate impact: selection.** In this context, disparate impact means that selection criteria, although uniformly applied, have an adverse impact on people with disabilities. Such criteria are permissible only when job-related and consistent with business necessity and where no reasonable accommodation is available. Where selection criteria include a safety requirement that an individual not pose a direct threat, an employer must demonstrate that the factors discussed in “Direct Threat to Health or Safety” (page 32) are met in order to assert that the safety criterion is job-related and consistent with business necessity.
- 3) **Disparate impact: non-selection.** Here, disparate impact means that non-selection criteria such as employer policies, although uniformly applied, have an adverse impact on people with disabilities. As above, such criteria are permissible only when job-related and consistent with business necessity and where no reasonable accommodation is available.
- 4) **Undue hardship.** Undue hardship may be raised as a defense to a charge that an employer failed to provide a reasonable accommodation.
- 5) **Conflict with other federal laws.** Where other federal laws may require or prohibit an action in conflict with the ADA requirements, the employer’s obligation to comply with the conflicting standard is a defense. For example, the ADA regulations specifically note the Department of Transportation regulations regarding drug and alcohol testing to ensure safety for particular transportation job categories, which may conflict with the ADA requirements with respect to those disabilities.

Relationship to Section 504

For many public entities, the requirements of the ADA employment provisions will not be new. Entities that are recipients of federal financial assistance have been and will continue to be subject to the requirements of the Rehabilitation Act of 1973. The Rehabilitation Act has some provisions, such as reporting requirements, that are different than the ADA; these requirements will still need to be followed.

Effective Dates for Public Employment Provisions

Title II became effective for all public entities on January 26, 1992, including the requirements concerning nondiscrimination in employment. The Title II regulations apply the requirements of Title I (Employment) to all public entities that are covered by Title I. Title II's requirements are effective for employers with twenty-five or more employees on July 26, 1992 and with fifteen or more employees on July 26, 1994. If a Title II entity is not covered by Title I, or until it is, the entity will be subject to the employment provisions of Title II, which adopt the standards of Section 504 of the Rehabilitation Act, as established by the regulations of the Department of Justice (28 C.F.R. Part 41). Additionally, if a state or local government department or agency receives federal funds, it is covered separately by Section 504 of the Rehabilitation Act.

28 C.F.R. §35.140

# of employees	APPLICABLE REGULATIONS	
	As of July 26, 1992	As of July 26, 1994
0-14	Section 504* and ADA Title II	Section 504* and ADA Title II
15-24	Section 504* and ADA Title II	Section 504* and ADA Title I & II
25+	ADA Titles I & II and Section 504*	ADA Titles I & II and Section 504*
<i>*if public entity receives federal funds</i>		

Now that you are familiar with what the law requires, there are some specific steps that you must take immediately in order to comply. These steps are detailed in the chapters that follow.

Chapter 2 • Action Steps

Title II of the Americans with Disabilities Act requires that state and local government entities do not discriminate against people with disabilities in their programs, services, and activities. State and local governments must take steps to examine their programs and establish a plan for compliance with the law. Chapter 1 discusses the legal requirements and the regulations for Title II. This chapter discusses the five action steps required to bring a public entity into compliance with the regulations:

STEP ONE: Designate a Responsible Employee

STEP TWO: Provide Notice of ADA Requirements

STEP THREE: Establish a Grievance Procedure

STEP FOUR: Conduct a Self-Evaluation

STEP FIVE: Develop a Transition Plan

§35.107(a) Designation of responsible employee. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

Public Entity: The definition of a public entity includes any non-federal unit of governments such as states, cities, towns, counties, parishes, authorities, boroughs, commissions and others.

Employees: Part-time employees are included in the definition of employees but contractors are not.

STEP ONE: Designate a Responsible Employee

Any public entity with fifty or more employees must designate at least one employee to coordinate ADA compliance. The regulation refers to this person as the responsible employee; however, because most entities call this person the *ADA coordinator*, we will use this title throughout the *Action Guide*.

The purpose of this requirement is to ensure that when the public deals with state and local government agencies, they are easily able to identify a person who is familiar with the requirements of the ADA and who can communicate these requirements to other individuals in the agency who may be unaware of their responsibilities. In order to ensure that individuals can easily identify the ADA coordinator, the public entity must provide the ADA coordinator's name, office address, and telephone number to the general public. This can be done through the notice described on pages 39–40.

The ADA coordinator is the key player in ensuring ADA compliance. The coordinator's role includes:

- planning and coordinating overall compliance efforts
- ensuring that the five action steps are achieved
- receiving and investigating grievances on programs, services, practices, and employment

The coordinator must have the authority, knowledge, and motivation to implement the regulations effectively.

Only public entities with fifty or more employees are required to designate an ADA coordinator. In order to ensure that Title II nondiscrimination, accessibility, and other requirements are met, however, entities with fewer than fifty employees might also find it useful to designate an ADA coordinator.

STEP TWO: Provide Notice of ADA Requirements

All public entities—regardless of size—must provide information to applicants, participants, beneficiaries, employees, and other interested parties regarding the rights and protections afforded by Title II, including information about how the Title II requirements apply to its particular programs, services, and activities.

It is the responsibility of the head of the governmental entity to determine the most effective methods for making individuals in the community aware of their rights and protections. A sample notice that can be adapted for different organizations and formats is provided on the next page. Note that in order to ensure effective communication, the information is presented in clear, straightforward English, avoiding legal and bureaucratic idioms. The sample notice also serves to notify the public of the appointment of the ADA coordinator and includes the coordinator's name, office address, and telephone number.

The public entity must provide this information not just once, but on an ongoing basis. Below are some of the ways in which this information can be provided on a regular basis to applicants, participants, and the general public.

In order to reach:	Provide the information through:
applicants or potential applicants	<ul style="list-style-type: none"> • newspaper advertisements • inclusion with applications • radio and/or captioned television public service announcements
participants	<ul style="list-style-type: none"> • postings at all program sites • program handbook • regular mailings • announcements at program, service, or activity meetings
public at large	<ul style="list-style-type: none"> • newspaper legal notice • posting at all facilities • radio and/or captioned television public service announcements

§35.106 Notice. A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured then by the Act and this part.

One of the ways public sector organizations have traditionally notified the public of equal opportunity policies is through the use of graphic symbols in notices and advertisements. These logos can effectively communicate a message regarding your agency's nondiscrimination policies and practices. The International Symbol of Accessibility is the wheelchair logo. The federal Fair Housing Amendments Act has adopted a house with an equal (=) sign in it as a symbol of non-discrimination. There are also standard symbols for the availability of TDDs, sign language interpreters, amplified telephones, and assistive listening systems.

Public entities are also required to provide Title II information in alternative formats to ensure that the information is accessible to people with disabilities. Examples of alternative formats include:

- radio reading services
- providing a large print notice on bulletin boards
- advertising in newspapers that have a large print edition
- open- or closed-captioned public service announcements (PSAs) on television
- audio tape
- ASCII computer diskette
- Braille

Sample Notice

(Public Entity) does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. (Public Entity) does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990.

Questions, concerns, complaints, or requests for additional information regarding the ADA may be forwarded to (Public Entity's) designated ADA Compliance Coordinator.

Name: _____

Title: _____

Office Address: _____

Phone Number: Voice _____ TDD _____

Days/Hours Available: _____

Individuals who need auxiliary aids for effective communication in programs and services of (Public Entity) are invited to make their needs and preferences known to the ADA Compliance Coordinator.

This notice is available in large print, on audio tape, and in Braille, from the ADA Compliance Coordinator.

STEP THREE: Establish a Grievance Procedure

All public entities with fifty or more employees must adopt and publish grievance procedures providing for prompt and equitable resolution of grievances arising under Title II. Public entities with fewer than fifty employees may also find it useful to establish a grievance procedure because all public entities—regardless of size—are subject to complaints that might best be resolved internally. One of the responsibilities of the ADA coordinator is to receive and investigate complaints.

The purpose of the grievance procedure is to provide a mechanism for the resolution of discrimination issues at the state or local level, rather than require the complainant to resort to the federal complaint process (see Chapter 1, “How Is Title II Enforced?” page 11).

The Title II regulations do not stipulate procedures for the grievance procedure. The public entity may use a grievance procedure that is already in place; there is no need to reinvent the wheel or duplicate existing procedures. If the organization does not already have a grievance procedure, one must be established. This requirement has been effective since January 26, 1992.

This *Action Guide* recommends that a grievance procedure include the following components:

- a detailed description of the procedures for submitting a grievance
- a two-step review process that allows for appeal
- reasonable time frames for review and resolution of the grievance
- good record-keeping for all complaints submitted and documentation of steps taken towards resolution

The following provides a sample grievance procedure for municipalities that incorporates these four components. The sample procedures can easily be adapted for other types of entities.

§35.107(b) Complaint procedure. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

Sample Municipal Grievance Procedure

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, programs, or benefits by (Name of Municipality).

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

(Name of ADA coordinator)
(Phone number)
(Address)

Within 15 calendar days after receipt of the complaint, (Name of ADA coordinator) will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, (Name of ADA coordinator) will respond in writing, and, where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of (Name of Municipality) and offer options for substantive resolution of the complaint.

If the response by (Name of ADA coordinator) does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision of the ADA coordinator within 15 calendar days after receipt of the response to the mayor or his or her designee.

Within 15 calendar days after receipt of the appeal, the mayor or his or her designee will meet with the complainant to

continued

continued

discuss the complaint and possible resolutions. Within 15 calendar days after the meeting the mayor or his or her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by (Name of ADA coordinator), appeals to the mayor or his or her designee, and responses from the ADA coordinator and mayor or his or her designee will be kept by (Name of Municipality) for at least three years.

§35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A list of the interested persons consulted;
- (2) A description of the areas examined and any problems identified; and
- (3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

STEP FOUR: Conduct a Self-Evaluation

All public entities—regardless of size—must conduct a self-evaluation. The self-evaluation is a comprehensive review of the public entity's current policies and practices, including communications and employment. Through the self-evaluation, the public entity must:

1. **identify** any policies or practices that do not comply with the Title II requirements; and
2. **modify** policies and practices to bring them into compliance.

The self-evaluation was to have been completed by January 26, 1993, and public entities have been liable for non-compliance with Title II since January 26, 1992. Therefore, if discriminatory policies or practices are identified during the review process, they should be modified immediately.

The regulations require that the public entity provide an opportunity for people with disabilities and other interested individuals or organizations to review and comment on the self-evaluation. However, the Department of Justice strongly encourages governmental entities to involve people with disabilities actively in the planning process. Chapter 3 describes a suggested approach to conducting a self-evaluation that provides for positive involvement of people with disabilities. Worksheets for the self-evaluation are provided beginning on page 89.

Public entities with fifty or more employees must keep the following self-evaluation information on file and available for public inspection for at least three years:

- a list of interested persons consulted about the self-evaluation
- a description of the areas examined and any problems identified
- a description of any modifications made

Relationship Between the ADA Self-Evaluation and the Self-Evaluation Required Under Section 504 of the Rehabilitation Act of 1973

Public entities that have completed a Section 504 self-evaluation for their federally funded programs are required to review only (1) non-federally funded programs, (2) any federally funded programs established since the Section 504 self-evaluation was conducted, and (3) new or modified policies or practices that were not included in an earlier self-evaluation.

However, because most self-evaluations were done five to twelve years ago, the Department of Justice expects that many public entities will have to reexamine all of their policies and programs. Programs and functions may have changed, and actions that were supposed to have been taken to comply with Section 504 may not have been fully implemented or may no longer be effective. Furthermore, many Section 504 self-evaluations focused on facilities access and did not sufficiently emphasize effective communications.

Public entities that were required to have completed Section 504 self-evaluations, and have not done so, may meet this obligation by including federally funded programs in the ADA self-evaluation. The deadlines for programmatic and structural modifications required under the ADA *cannot* be substituted for the Section 504 deadlines, however. Federally funded state and local entities must meet both the Section 504 and the ADA compliance deadlines. If the public entity has not completed the Section 504 review or made the necessary modifications to policies and procedures, it might prioritize modifications to federally funded programs in order to ensure Section 504 compliance as quickly as possible.

§35.150(d) Transition plan.

(1) *In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.*

(2) *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.*

(3) *The plan shall, at a minimum—*

(i) *Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;*

(ii) *Describe and detail the methods that will be used to make the facilities accessible;*

(iii) *Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and*

(iv) *Indicate the official responsible for implementation of the plan.*

STEP FIVE: Develop a Transition Plan

Public entities with fifty or more employees must develop a transition plan when structural changes to existing facilities are necessary in order to make a program, service, or activity accessible to people with disabilities. However, all public entities—regardless of size—may find a transition plan useful whenever structural changes are required to bring the organization into compliance.

The regulations require that, at a minimum, the transition plan:

- identify physical obstacles that limit the accessibility of the public entity's programs, services, or activities to people with disabilities
- describe the methods to be used to make the facilities accessible
- provide a schedule for making the access modifications; provide a yearly schedule for making the modifications if the transition plan is more than one year long
- indicate the public official responsible for implementation of the transition plan

Public entities with fifty or more employees that have responsibility for or authority over streets, roads, or walkways, must include in the transition plan a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs. Priority must be given to those walkways serving entities covered by the ADA, such as state and local government offices and facilities, transportation, places of public accommodation, and employers. Public entities that have responsibility for or authority over streets, roads, or walkways but have fewer than fifty employees must adhere to provisions concerning curb ramps or other sloped areas where pedestrian walks cross curbs.

The regulations require that the governmental entity provide an opportunity for people with disabilities and other interested individuals or organizations to review and comment on the transition plan as well as the self-evaluation. As discussed previously, public entities may find it more useful to involve people with disabilities and /or disability expertise earlier on in the planning process. When the transition plan is completed, it must be made available for public inspection.

The transition plan was to have been developed by July 26, 1992. Any structural changes outlined in the transition plan were to have been completed by January 26, 1995.

**Relationship Between the ADA Transition Plan
and the Transition Plan Required Under Section 504
of the Rehabilitation Act of 1973**

Public entities that have completed a Section 504 transition plan for federally funded programs, are required to include in the ADA transition plan only those facilities that were not previously evaluated. This would include all facilities that receive only state and local funds as well as facilities serving federally funded programs that have been leased or developed since the Section 504 transition plan was conducted.

The deadlines for structural modifications required under the ADA *cannot* be substituted for the Section 504 deadlines. Facilities that house federally funded programs must continue to meet the Section 504 requirements as well as ADA requirements. Public entities that have completed a Section 504 transition plan for federally funded programs should review the plan and determine whether all required structural changes were made. If the structural changes outlined in the Section 504 transition plan were not made, these might be prioritized in the ADA transition plan.

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

SUMMARY: Title II Requirements and Effective Dates**REQUIREMENTS**

Action Step	Entities required to comply
1. Designate Responsible Employee	50 or more employees
2. Provide Notice	All entities
3. Establish Grievance Procedure	50 or more employees
4. Conduct Self-Evaluation	All entities
5. Develop Transition Plan	50 or more employees

By the time this edition of the handbook is available, the deadlines in Title II for the required steps will have passed. The best protection against complaints and litigation and the best assurance of cost-effective use of public funds is a quality compliance effort. The next chapter describes one approach to completing these action steps, which can enable public entities to move forward without sacrificing the thoroughness essential to effective compliance.

EFFECTIVE DATES

Requirement	Effective Date
1. Designate Responsible Employee	Required as of Jan. 26, 1992
2. Provide Notice	Required as of Jan. 26, 1992
3. Establish Grievance Procedure	Required as of Jan. 26, 1992
4. Conduct Self-Evaluation	Completed by Jan. 26, 1993
5. Develop Transition Plan	Completed by July 26, 1992
6. Complete Structural Changes	Completed by Jan. 26, 1995

Chapter 3 • Implementation

This chapter presents methods for effectively meeting the five general requirements of the Title II regulations. The approaches described here reflect the experience of several communities with Section 504 over the past decade as well as their recent experience with the early stages of ADA compliance.

Four Principles of Effective Compliance

Public officials with Section 504 and ADA experience cite four general principles as keys to an effective compliance process:

1. commitment from entity leaders
2. coordination of compliance activities
3. involvement of people with disabilities
4. institutionalization of compliance procedures

COMMITMENT FROM ENTITY LEADERS

An explicit commitment by a public entity's senior political and executive leadership to the purposes and values of the ADA is extremely valuable in establishing a solid foundation for the compliance effort. When the governor, mayor or department head takes a leadership position, there is more incentive for the program managers and staff to address nondiscrimination. Senior leadership should remain involved throughout the compliance process, reviewing progress and participating in decision-making at critical points such as the approval of budgets for barrier removal.

COORDINATION OF COMPLIANCE ACTIVITIES

ADA compliance is a complex process that affects the entity at many levels. Experience indicates that compliance activities are best approached as a coordinated whole. Coordination can facilitate the sharing of information and resources, and strengthen accountability. The designation of the ADA coordinator by the head of the entity is a critical first step in promoting coordination. In addition, the formation of a compliance team to work with the coordinator is useful in all but the smallest organizations. The team should reflect the major divisions and functions of the organization and should include personnel who have the skills and experience necessary to carry out planning and implementation tasks.

INVOLVEMENT OF PEOPLE WITH DISABILITIES

The Title II regulations require that public entities involve people with disabilities and other interested people in the self-evaluation process and in the development of the transition plan. The experience of many communities confirms that cooperation between the disability community and governmental entities can lead to creative problem solving, improved communications, and mutual understanding. One regional airport, for example, recruited a representative of the local disability community as a member of its ADA compliance team. This individual was instrumental in organizing site evaluations in which people with a variety of disabilities analyzed and commented on the operation of the airport. In addition to strengthening community relations, this process yielded valuable insights about problem areas in airport operations and the design of the facility.

INSTITUTIONALIZATION OF COMPLIANCE PROCEDURES

The self-evaluation and the transition plan target needed modifications in employment practices, operating procedures, communications and the design and maintenance of facilities. Ensuring that these modifications are made and that access is institutionalized is a difficult task. One of the lessons learned from the Section 504 experience was that many organizations failed to follow through on their planning, while others instituted changes unevenly or allowed them to erode over time. Success in implementing permanent changes depends to a great extent on the quality of the planning process itself and on the degree to which compliance becomes integrated in ongoing operations.

Three-Phase Process

This approach organizes the compliance process into three main phases that incorporate the four principles above while meeting the five requirements outlined in Chapter 2. The flowchart on the next page illustrates the three phases of the compliance process:

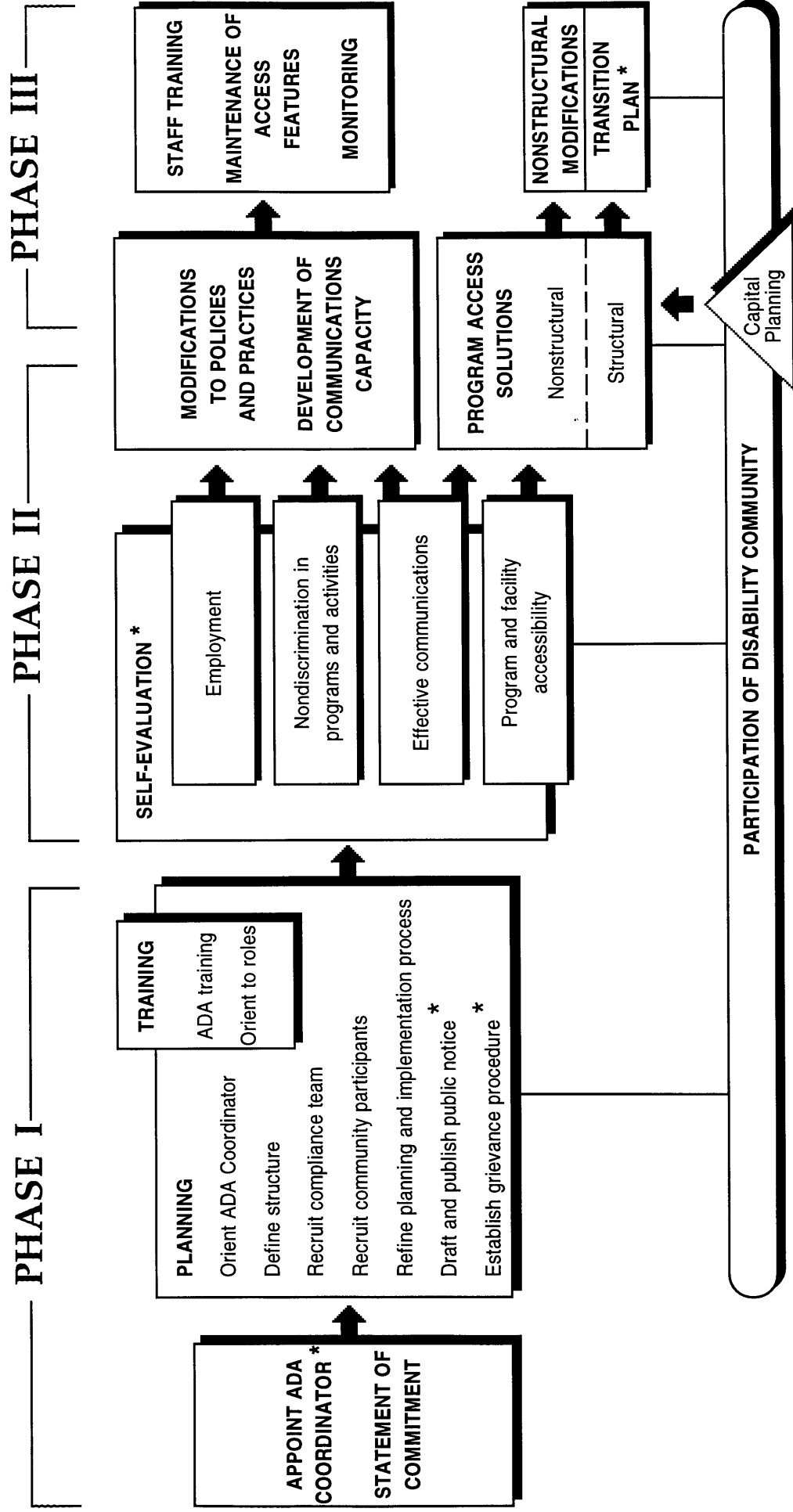
Phase I: Planning for compliance

Phase II: Conducting the self-evaluation

Phase III: Implementing modifications

The three phases are not chronologically distinct. Phases II and III, in particular, overlap extensively. Discriminatory policies, practices, and procedures identified in the self-evaluation should be modified as soon as possible, even before the self-evaluation is

ADA Title II Compliance Flowchart



* Administrative requirements, detailed in Chapter 2

completed. When barriers to programs and facilities are identified, nonstructural changes to ensure program accessibility should be made as expeditiously as possible.

PHASE I: PLANNING FOR COMPLIANCE

Successful ADA compliance requires careful planning, preparation, and training, and includes the participation of staff members from key departments, including facilities managers and fiscal, program, and human resources staff. This section describes four steps recommended for this first phase of the compliance process.

Statement of Commitment

Commitment by the entity's senior political and executive leadership is essential and can be expressed in a variety of ways. A well-publicized public declaration of support or adoption of a formal policy statement can set a positive tone that facilitates staff work and promotes support and cooperation.

Example: The City Manager (senior executive leadership) introduces the subject of ADA at a general meeting of the City Council (senior political leadership). She has informed the council in a memo prior to the meeting that the city has obligations under the ADA. At the meeting, she distributes a fact sheet summarizing Title II and discusses the appointment of an ADA coordinator. She further outlines the Council's role in setting policy and reviewing progress. The City Manager interviews candidates, appoints an ADA coordinator, sets ground rules to ensure that the coordinator has access both to the entity's leadership and to all components of the town government, and provides for a review of progress by the City Manager and Council.

Appointment of the ADA Coordinator

The ADA coordinator is central to ensuring ADA compliance. The role of the ADA coordinator includes:

- coordinating overall ADA compliance
- involving people with disabilities and interested parties in the compliance process
- conducting the self-evaluation
- preparing the transition plan
- investigating grievances

ADA compliance affects many aspects of the entity. In most organizations, it would be difficult or impossible for any one individual to carry out all of the required tasks. The role of the ADA coordinator is to coordinate the teamwork needed to complete the required tasks and achieve compliance.

The ADA coordinator must have the authority, knowledge and motivation needed to bring the entity into compliance. The regulations do not require that the public entity designate a person in any particular position as the ADA coordinator. The only requirement is that the individual be an employee of the public entity. Some of the variables to consider in choosing an ADA coordinator include:

- **Authority within the state or local government entity**

The ADA coordinator's authority within the agency will affect his or her ability to implement the Title II requirements. An ADA coordinator who reports directly to the head of the entity is more likely to obtain the participation and assistance of his or her colleagues. Designating someone who has little formal or informal authority to ensure Title II compliance is likely to reduce the potential for successful compliance.

- **Disability experience**

As with any responsible position, experience can enhance effectiveness. A person with a disability or disability-related experience is likely to have more experience and knowledge of discrimination and access issues. Experience with Section 504 is valuable since Title II is based on Section 504. Knowledge of state access and nondiscrimination laws is extremely important.

- **Knowledge of the entity, community and programs**

One of the major ADA compliance activities is the self-evaluation, a comprehensive review of all programs, services and activities. A new employee or an employee with limited experience may have a difficult time coordinating or conducting this review. Individuals who have a broad knowledge of the entity's activities and overall organization are likely to be more effective in managing the process, obtaining the necessary information, and facilitating the development of creative solutions.

While the ADA coordinator is given the responsibility for coordinating and ensuring that the entity achieves compliance, the entity's chief executive officer retains final responsibility for compliance.

- **Skills and personal qualities**

The ADA coordinator should be well-organized and skilled in collecting and analyzing information. If the entity implements a team approach, the ADA coordinator should have the leadership qualities necessary to manage, coordinate, train, and motivate a team.

ADA Coordinators

The following are examples of ADA coordinators chosen by a variety of public entities:

- State of Rhode Island: Director, Governor's Commission on Persons with Disabilities
- Haverhill, Massachusetts: Staff member, Community Development Department
- Austin, Texas: Staff member, Human Rights Commission
- Massachusetts Rehabilitation Commission: Director of Affirmative Action

Preliminary Planning

The ADA coordinator's first task in the development of the compliance process is preliminary planning of compliance activities. As part of this process, the coordinator should:

- review the ADA statute and regulations
- attend an ADA training program
- review the public entity's Section 504 documents and plans
- discuss compliance with key entity staff and with community leaders
- draft a compliance process work plan
- evaluate personnel and resources needed for the compliance process
- recruit, orient, and train the compliance team
- draft the notice and grievance procedure

The draft compliance process work plan, notice, and grievance procedure should be presented for approval to the political and executive leadership of the entity. Once approved, the notice and grievance procedure must be published, preferably with a formal policy statement acknowledging the importance of the ADA and expressing leadership commitment to the ADA's values and goals.

DRAFTING THE COMPLIANCE PROCESS

There is no one correct approach to compliance. Each public entity must formulate an approach that best suits itself and the community it serves. The chart below illustrates how two public entities, a state and a city, have approached the self-evaluation and compliance process.

State of Rhode Island	City of Austin, Texas	
Director, Governor's Commission Persons with Disabilities	Staff member, Human Resources, Human Rights Commission.	ADA Coordinator
High-ranking representatives from all three branches of state government—executive, legislative, and judicial.	Representatives from city departments and disability organizations in the community.	ADA team
<ol style="list-style-type: none"> 1. Coordinating committee formed ten working groups (public safety, etc.). 2. Department liaison conducted review and brought results to committee or committee conducted review. 3. Developed common findings and solutions. 4. Submitted committee reports to coordinating committee. 5. Final report signed by all agency heads and governor with pledges to implement. 	<ol style="list-style-type: none"> 1. Sensitivity awareness training held for task force. 2. Each department assigned one or two staff members as department ADA coordinators to work with citywide coordinator. 3. Task force reviewed regulations, identified preliminary issues, and developed review plan. 4. Program accessibility targeted. Citywide ADA coordinator worked with the Department of Public Works-assigned coordinator to conduct surveys of all facilities. 5. Citywide ADA coordinator met with each department coordinator and staff to review programs, policies, and practices. 	Self-evaluation process

ADA training programs are available from a number of sources. Many entities have people on staff, advisory boards, or commissions and in nearby community organizations who can contribute to staff development and training. A variety of outside ADA training opportunities, materials, and consultants are also available. The *Title II Technical Assistance Manual* is available from the U.S. Department of Justice. Referrals to training and consulting sources are available through the federally funded Disability and Business Technical Assistance Centers. A word of caution, however, is in order: An industry of instant experts has sprung up around the ADA.

Check references and credentials carefully when selecting ADA training or consultants. For more information, request the “ADA-related Consultant/Contractor Guidelines” from your Technical Assistance Center.

RECRUITING, ORIENTING, AND TRAINING THE COMPLIANCE TEAM

Although the specifics of the approaches described above differ, the prior experience of each entity led them to adopt a team approach. A team approach is key to achieving successful compliance for several reasons. First, the self-evaluation and transition plan require the collecting of information from all programs, services, and activities of the entity; this is too large a task for one person. Second, the transition plan and self-evaluation require varied expertise and specialized skills. A team approach enables individuals with all of the necessary skills to be involved in the compliance process.

One of the important aspects of the ADA coordinator’s job is to identify the various players needed for this team effort. While each entity has its own requirements, the following criteria should be considered in establishing the compliance team and structure:

- **Representation of all departments**

Each department or other major organizational unit should designate a liaison to the compliance team. Liaisons should participate in overall planning and decision making, collect information regarding his or her department’s policies and practices, inform staff within the department of ADA requirements, and serve as contact person for the public within that department.

- **Special skills and expertise**

Including staff and/or external parties with skills and expertise in the following areas will be very helpful to the team:

- facilities management
- capital planning
- employment
- finance and budgeting
- contracts and purchasing
- public works
- structural and communication accessibility

- **Opinion leaders**

The inclusion of “opinion leaders” on the compliance team—people who are respected by their colleagues—may be useful in strengthening cooperation and participation in the compliance process and in promoting effective institutionalization of the results.

- **Involvement of people with disabilities**

Individuals with disability experience are key to ADA compliance for several reasons. First, the regulation requires that you provide an opportunity for people with disabilities and other interested individuals or organizations to review and comment on the self-evaluation and transition plan. Second, involving the end users in the process will generate solutions that are creative and effective. Third, involving people with disabilities in decision-making will strengthen the accountability of the process and ensure wise use of limited public resources.

Simply having a disability does not, in and of itself, qualify an individual to participate on the ADA team. People chosen to participate should be knowledgeable of the ADA and have the disability expertise needed for the review. An effective participant should be able to represent not just his or her personal perspective but also that of as broad a constituency as possible within the disability community.

The team should include representation of as wide a range of disabilities as possible. People with physical, visual, hearing, speech, cognitive, learning, psychiatric, and other disabilities may be included on the team.

Once the ADA compliance team has been recruited and approved by the senior political and executive leadership, the ADA coordinator should set up an initial team meeting. In the first meeting it may be useful to provide background information and review and revise the proposed compliance work plan.

Early on, the team should attend an ADA training program, either in-house or off-site. Based on the compliance plan, the team can form committees to refine the compliance process, develop or refine assessment tools, and recruit additional participants, as needed. The team should also establish a schedule for compliance activities.

Agencies are often wary of inviting external parties to participate in reviews such as the self-evaluation. The experience of many agencies, however, has demonstrated that the participation of people with disabilities and disability organizations creates trust and leads to more cost-effective solutions and fewer disputes in the long run.

If you are unsure of how to identify disability organizations to assist in the self-evaluation, your regional Disability and Business Technical Assistance Center may be able to provide a list of organizations in your area. You could also place a notice in the newspaper or on the radio asking local individuals and organizations to participate.

PHASE II: CONDUCTING THE SELF-EVALUATION

Once the team has been oriented and trained and the compliance process refined, the self-evaluation process begins. The self-evaluation is a comprehensive review of the policies and practices of all programs, activities, and services operated by the public entity to ensure that they are in compliance with Title II requirements. Through the self-evaluation the entity identifies any policies or practices that discriminate against people with disabilities. In Phase III, these policies and practices will be modified to bring the entity into compliance.

Identifying Departments and Programs

One way to make sure that the self-evaluation is comprehensive is to begin at the departmental level and identify all of the programs, services, and activities to be reviewed. A city or town may have twenty or more departments, including:

Assessors	Hospital	Public Works
Building	Libraries	Retirement
City Clerk	Mayor's Office	School
Council on Aging	Parks and Recreation	Treasurer
Fire	Personnel	Youth Services
Health	Police	Veterans
Historical	Planning	Voter Registrar

Within each department, all programs, services, and activities must be reviewed. A Council on Aging, for example, might provide meal programs, transportation programs, health services, recreational activities, a newsletter, and public information and referral services. **Worksheet 1, List of Departments or Programs**, can be used to make sure all programs, services, and activities are reviewed.

In addition to regular or ongoing programs, occasional or one-time activities are covered by Title II. For example, a dance sponsored by a local high school is a covered activity, as is the inauguration of a governor.

The self-evaluation must cover four major areas:

1. general nondiscrimination provisions
2. communication
3. program and facility accessibility
4. employment

The following section reviews the entity's responsibilities in each of these areas with suggestions for conducting the self-evaluation.

General Nondiscrimination Provisions

TITLE II REQUIREMENTS

The self-evaluation must include a thorough review of both the formal written policies and the actual operating practices of each program, service, or activity in relation to the general prohibitions against discrimination contained in Title II. When discriminatory policies and practices are identified, they must be changed without delay. The general prohibitions, which are discussed more fully in Chapter 1, cover a wide range of issues, including:

- **Equal Opportunity to Participate and Benefit.** Individuals with disabilities must be provided an equally effective opportunity to participate in or benefit from a public entity's benefits or services.

Example: A town meeting held in an inaccessible location prevents people with disabilities from participating in the proceeding.

- **Eligibility Criteria.** Public entities may not use eligibility criteria that directly or indirectly screen out or tend to screen out people with disabilities, unless such criteria can be shown to be necessary to the operation of the program. Public entities are also prohibited from putting any additional burden or requirement on people with disabilities.

Example: A summer day camp may not require that a child who uses a wheelchair be accompanied by an attendant in order to attend the camp.

Note that legitimate safety criteria are permitted even when they tend to screen out people with disabilities.

Policies and practices identified as discriminatory must be modified right away. Public entities are fully liable for all discriminatory practices since Title II's effective date, January 26, 1992.

Example: A vision test may be required in order to obtain a driver's license.

- **Methods of Administration.** A public entity cannot use criteria or methods of administration that subject people with disabilities to discrimination. This means that the entity can neither use explicit written policies nor actual operating procedures that are discriminatory.

Example: A scuba class cannot exclude people who use wheelchairs simply because the instructor believes that people who use wheelchairs cannot swim well enough. However, the scuba class may require participants to pass a swimming test if swimming is needed for safe participation in the class.

- **Integrated Programs.** Integration is fundamental to the purposes of the ADA. Activities must be provided in the most inclusive setting appropriate.

Example: A student who uses a wheelchair cannot be asked to eat in a classroom rather than the school cafeteria.

- **Separate Programs.** People with disabilities should not be provided separate services or programs unless they are necessary to afford an equal opportunity to benefit from the service or program. Even if separate programs are provided, individuals with disabilities have the right to choose to participate in the integrated program.

Example: An historic preservation agency may sponsor a separate tour of the city for people with visual disabilities. The agency, however, cannot require people with visual disabilities to participate on this tour and cannot prohibit an individual with a visual disability from participating in a general tour.

- **Reasonable Modification of Policies, Practices, and Procedures.** Title II requires that public entities make reasonable modifications to policies, practices, or procedures when necessary to avoid discrimination, unless to do so would fundamentally alter the nature of the programs or services offered.

Example: A facility with a "no animals allowed" policy must modify this to permit people who use service animals to enter.

- **Surcharges.** The regulation prohibits public entities from charging people with disabilities for an auxiliary aid or program modification made to provide accessibility or to prevent discrimination.

Example: An individual who has a visual disability signs up for an adult education class. He requests the written materials on audio tape. The individual may not be charged an additional fee for the audio tape.

- **Planning and Advisory Boards.** The regulations prohibit public entities from denying a qualified person with a disability an opportunity to participate on a planning or advisory board.

Example: A person with a psychiatric disability cannot be denied a position on the board of a mental health center because of her disability if she meets the qualifications for membership.

- **Facility Location.** Public entities may not choose a site or location for a facility that would result in the exclusion of people with disabilities from services, programs, or activities.

Example: A state should not relocate a welfare office to the second floor of an office building that has no elevator.

- **Licensing and Certification.** Public entities must ensure that any certifying or licensing programs comply with Title II requirements. A qualified individual with a disability cannot be denied licensing or certification if he or she meets the essential eligibility requirements for the licensed or certified task. Criteria unrelated to the essential requirements of the licensed activity cannot be used to exclude people with disabilities.

Example: A school teacher cannot be denied certification because he is deaf and the practice teaching program does not provide sign language interpreters.

- **Procurement Contracting.** Public entities cannot use criteria that discriminate against people with disabilities in awarding contracts for services, supplies, or equipment.

Example: A county cannot refuse to contract with a cleaning service because it employs individuals who have epilepsy.

- **Association.** Public entities may not exclude or deny services to individuals because of their association with a person with a disability.

Example: A town recreation area cannot refuse to allow a child to use the pool because his brother has AIDS.

Contractors

Almost every public entity has contracts or agreements with private entities to provide services, goods, supplies, or others products either directly to the entity or to its beneficiaries. Such contractual relationships are covered by Title II. The particular Title II requirements depend on the specific relationship between the public entity and the private or nonprofit entity. The Title II regulations distinguishes between two types of relationships: procurement contracts and contractors performing governmental functions. Procurement contracts were discussed in Chapter 1, page 14, and in this chapter, above, and can be documented using Worksheet 2.

Contracting out the performance of a public program or service does not diminish the public entity's responsibility for ensuring ADA compliance in that program or service. Title II requires that public entities do not discriminate against people with disabilities either directly or through contractual arrangements. All contracted programs or services must be included in the self-evaluation. The entity can choose to conduct the self-evaluation review or may require the contractor to conduct the review. Ensuring that private agencies operating public programs comply with nondiscrimination requirements requires ongoing monitoring.

Some ways in which the public entity can ensure that contractors comply include:

- Require that the contractor conduct a self-evaluation and provide a transition plan.
- Include ADA compliance requirements in every new request for proposal.

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- Review ADA requirements when contracts or leases are negotiated, revised, or renewed.
- Include ADA requirements and nondiscrimination clauses in standard contracts.
- Invite contractors' staff members to attend ADA trainings.
- Cancel contracts that do not comply with access requirements within a specified period of time.
- Check ADA compliance when monitoring contract performance.
- Conduct ADA compliance reviews of a random sample of contractors each year.

CONDUCTING THE REVIEW OF POLICIES AND PRACTICES

The review may be organized and conducted in a variety of ways (see the organizational schemes of the State of Rhode Island and the City of Austin in the chart on page 55). Written policies may be reviewed in at least three different ways:

- by program staff under the guidance of the departmental liaison
- by the liaison for all programs in the department
- by the ADA coordinator and team

However, in the review of operating procedures, involving members of the program staff is indispensable to a truly comprehensive effort. Only program staff members know how operations are actually carried on day to day. Also, direct staff involvement in the evaluation process is a natural and effective way to begin the process of institutionalizing change.

Staff members need to understand not only specific procedural and policy changes, but also what is and is not discrimination under Title II. The review process cannot anticipate every conceivable situation in which staff must modify an established practice in order to enable a person with a disability to participate in and benefit from programs. The key to instilling this kind of flexibility and responsiveness is to encourage staff to understand the goals of Title II.

To facilitate staff involvement, **Worksheet 2, General Policies and Practices Review** summarizes the general prohibitions against discrimination in six sets of questions: four related to program operation and two on external relations.

The worksheet questions are organized around simple, straightforward principles that can be introduced as part of the orientation to the self-evaluation process:

Program Operations

1. People with disabilities cannot be restricted or denied equal opportunity to participate and benefit.
2. Programs must operate in ways that support integration.
3. No additional charges or burdens may be required of people with disabilities.
4. Programs must have the flexibility to reasonably solve problems to afford people with disabilities equal opportunity to participate and benefit.

External Relations

1. Contractors performing functions of a public entity may not discriminate against people with disabilities.
2. Public entities may not discriminate in awarding procurement contracts, licenses, or certifications.

Communication

TITLE II REQUIREMENTS

Governmental entities must provide effective means of communication to people with visual, hearing, speech, and cognitive disabilities. Communication support must be provided in a manner that enables people with disabilities to participate on an equal basis with all others, unless to do so would result in a fundamental alteration to the program or activity or in undue financial or administrative burdens. The self-evaluation must include a complete assessment of policies, procedures, and resources necessary to ensure that people with disabilities are not excluded, segregated, or restricted in any way as the result of communication barriers.

Once areas that need improvement are identified, communication barriers can be eliminated through two primary means:

1. auxiliary aids and services
2. structural communications features

Auxiliary Aids and Services

Auxiliary aids and services include a wide variety of equipment, materials, and personal services that may be used to provide effective communication for people with visual, hearing, speech, or cognitive disabilities. For example, people with limited vision are often not able to read regular print materials or to use graphic or visual information; they may also have difficulty in finding their way in unfamiliar spaces.

Auxiliary aids and services for people with visual disabilities include: print information provided on tape cassettes, on computer diskettes, in Braille and in large print, or read by qualified readers; verbal descriptions of action and visual information to enhance the accessibility of performances and presentations; a staff member serving as a guide to enable a person with limited vision to find his or her way along an unfamiliar route.

Auxiliary aids and services for people with hearing disabilities include: qualified interpreters, written notes, real-time transcriptions, video text displays, amplified and hearing-aid compatible telephones, assistive listening systems, open or closed captioning and caption decoders, flashing alarms, and text telephones or Telecommunication Devices for the Deaf (TDDs).

Auxiliary aids and services for people with cognitive disabilities (a broad term covering a variety of conditions including mental retardation, head injury, and learning disabilities, among others) include: readers, communications assistants, use of clear and concise language, repetition, pictograms, and graphic presentation of information. For example, pictorial signage can assist people with cognitive disabilities to differentiate between a men's rest room and a women's rest room.

Title II defines the following guidelines for determining which types of auxiliary aids and devices to provide:

1. **Public entities must give "primary consideration" to the preference of the person with a disability.** This means that the entity must give each person with a communications impairment an opportunity to request the auxiliary aid or service of his or her choice. That choice must be given primary consideration and must be honored unless the entity can demonstrate that another equally effective means of communication is available or

Additional information on auxiliary aids and services can be found in the *ADA Title III Fact Sheets*, produced by the Adaptive Environments Center and available from your Disability and Business Technical Assistance Center. Also useful are two fact sheets produced by the American Speech-Language-Hearing Association: *Communication and the ADA* (see Bibliography).

that the auxiliary aid requested would result in a fundamental alteration in the service, program, or activity or in undue financial or administrative burdens.

2. **Public entities must provide *effective means of communication*.** In order to determine whether a particular aid, device or service is an effective means of communication, the entity must take a number of factors into consideration. First of all, the entity must consider the particular communication needs of the person requesting the auxiliary aid or service. For example, a person with a hearing disability may need an interpreter in order to participate in a conference. She should be consulted to determine whether she needs an interpreter who uses American Sign Language or Signed English or other specialized vocabulary.
3. **Public entities are not required to take actions that would cause undue burdens.** Providing effective means of communication is not required if to do so would result in undue financial or administrative burdens or a fundamental alteration to the program, service, or activity. However, if an entity determines that all fully effective means of communication involve undue burdens or fundamental alteration, the entity is nevertheless obligated to provide the best means of communication available that would *not* entail undue burdens or fundamental alteration.

Factors that may influence whether a particular auxiliary aid or service provides effective communication are:

- **the duration and complexity of the communication.** Longer, more detailed exchanges often require more powerful and faster modes of communication. For a person who is deaf, for example, handwritten notes are not adequate for a thorough intake interview in a social service program. Taking turns at a computer terminal may be faster than exchanging notes; for some people, the use of a qualified sign language interpreter might be more effective.
- **the context of the communication.** Environmental conditions, such as the difference between a structured office setting and an outdoor recreational setting, influence the effectiveness of communication using various devices and techniques.

- **the number of people involved.** Communication techniques that are effective between two people might not work well in a group context. A person who has limited hearing may be able to understand one-to-one conversation in a quiet office setting, for example, but may not be able to do so in a group setting.
- **importance and potential impact.** Some communications, such as those involving legal, financial, health, and safety issues, are more important than others and should be provided in ways that guard carefully against errors, omissions and misunderstandings. In all circumstances the importance of the communication and the potential impact of the information should be taken into consideration. For example, hospital admittance, welfare determinations, and housing subsidy applications often require the precise exchange of information.

Structural Communication Features

Communication features that are structural in nature are those that are fixed or built into the facility. These are not considered auxiliary aids; rather, they are part of the review of the facility for physical accessibility and should be included in the transition plan. Examples of structural communication features include:

- flashing signals to inform people with hearing disabilities of a fire alarm
- tactile signage with raised letters to enable people with visual disabilities to use an elevator panel or identify rest rooms, specific room locations, and exits
- sound amplification devices such as public address systems and amplified receivers to increase the audible information that people with limited hearing are able to perceive
- FM broadcast systems to transmit amplified sound to people with limited hearing or descriptive information to people with limited vision

Sign Language Interpreters and TDDs

Two issues of particular concern to the Deaf community are the provision of qualified sign language interpreters and Telecommunication Devices for the Deaf (TDDs).

Sign Language Interpreters

When sign language interpretation is necessary to ensure effective communication, Title II requires that it be provided by a "qualified interpreter." The definition of a *qualified interpreter* is an interpreter who is "able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary." A qualified interpreter is not necessarily a certified interpreter. Under this definition, even the most skilled interpreter may not be qualified in circumstances where a personal relationship with one of the parties to the communication interferes with impartiality. Even if the interpreter is certified, he or she may not be familiar with the context or subject matter and might not be able to provide effective communication. For example, interpreting a court proceeding in which a deaf person is a litigant or defendant requires a command of a specialized legal vocabulary.

TDDs and Amplified Telephones

When a public entity communicates with the public by telephone, Title II requires that TDDs or equally effective means be used to communicate with people who have hearing or speech disabilities. The establishment of telephone relay services, in which a communications assistant serves as an intermediary between a TDD user and a voice user, is mandated by Title IV of the ADA. Telephone relay services can provide effective telecommunications in some circumstances; however, where communication by telephone is a major function of the governmental program or activity, such as city hall, public libraries, or social service programs, TDDs should be available.

TDDs, as well as amplified phones and phones equipped with inductive coils making them compatible with hearing aids,

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should also be installed where the public is provided opportunities to call out of a facility on more than an incidental basis. Locations for installation of such equipment at fixed locations in existing facilities can be identified as part of the facility accessibility analysis. TDDs and amplified phones should be distributed so that they are readily accessible from locations in which public phones are available. Portable TDDs must also be available whenever personal phones are provided, such as patients' rooms in hospitals.

Direct telecommunication access by TDD must be provided for fire, police, ambulance, and all other emergency information and services. The Title II regulations state that direct access for emergency services must be provided for both TDD and computer modem calls. However, DOJ clarified in its Title II Technical Assistance Manual that because of unresolved technical problems in receiving some electrical code formats, direct emergency call access is currently required only for Baudot format. Direct emergency service access for non-voice calls must be as effective as those provided voice calls in terms of response time and hours when the service is available. Emergency services are also encouraged but not required to equip handsets with voice amplification transmission devices, in order to communicate effectively with people with limited hearing who may be using a telephone that does not have an amplified receiver.

CONDUCTING THE COMMUNICATION REVIEW

To ensure that an entity provides effective communication for people with disabilities, the self-evaluation must include a review of written policies as well as of the actual communications practices of all programs. The level and quality of communication accessibility required by Title II is higher than that which most public entities have previously offered and, therefore, will usually involve the development of new procedures and substantial additional resources.

The review of written policy can be conducted in a variety of ways: either centrally by the ADA compliance team or at the departmental level under the supervision of the departmental liaison. The *Action Guide* recommends, however, that program staff

be actively involved in the review of communications procedures for three reasons:

1. The review may identify programs that have communications resources and expertise in place that will be useful to other programs or to the entity as a whole.
2. The process can be used to evaluate the communications functions of each program and to assess the quantity and type of additional communications resources needed.
3. Involving program staff in the early stages of review is often the best way to enlist their understanding and support to implement change later in the process.

The communications review should cover the following areas:

Communication in all programs, services and activities

- printed information that may limit the participation of people with visual or cognitive disabilities
- aural communication (information that is heard) that may limit the participation of people with hearing disabilities
- oral communication (information that is spoken) that may limit the participation of people with speech disabilities

Telecommunications

- If staff members communicate over the telephone with the public, applicants or program participants, a TDD or equally effective telecommunications system must be provided.
- If the entity provides emergency telephone services, direct access to a TDD must be provided.

Signage and information

- Accessible entrances must be identified. Signs directing the public to accessible entrances should be provided at all inaccessible facility entrances.
- Information regarding the existence and location of accessible services, activities, and facilities must be provided.

Worksheet 3, Communication Access Assessment, and Worksheet 4, Communication Summary and Action Plan, are designed to be used in the communication review.

The review can be conducted by the ADA compliance team itself, by individuals with communications expertise, by program staff

who receive training, or through other methods. In any event, individuals with expertise in communications supports should participate in the review. A methodical review of communication in all programs, services, or activities is important, even when the public entity is generally aware beforehand that its policies and practices are not in compliance. First, through the review, staff members will learn to identify areas where aids and services may be needed to provide effective communication. In addition, the review process will provide the entity with information about the need for various types and amounts of auxiliary aids and services. This information will be valuable in Phase III for developing the capacity to provide effective communication.

Program and Facility Accessibility

TITLE II REQUIREMENTS

The ADA prohibits public entities from denying people with disabilities equal opportunity to participate in programs and activities because facilities are inaccessible. This does not mean, however, that all buildings must be made fully architecturally accessible. The requirement is that a public entity operate each program so that, when viewed in its entirety, the program is readily accessible to and usable by people with disabilities. This is known as the *program accessibility* standard, and it is one of the most important concepts in ADA compliance planning. Once program accessibility is understood, it will serve as a guideline in evaluating facilities and formulating structural and nonstructural solutions to access problems.

Understanding Program Accessibility

In operational terms, what does it mean to view a program “in its entirety,” and how does doing so affect the way a public entity goes about the process of identifying barriers to access and developing solutions? To view a program in its entirety means that the program must be evaluated both in terms of the parts or elements that make up the program and in terms of the way they work together as a whole.

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Take as an example a hypothetical city library system. To evaluate the accessibility and usability of the system in its entirety it is necessary to consider:

1. the resources and activities provided in each library
2. the operation of the libraries in the system as a network
3. the resources and activities provided in each facility
4. any out-of-building activities that are part of the operation of the system

Let's assume that the library system has six buildings, a central downtown library, and five branches in residential areas outside the city center. The system also operates a bookmobile that visits each neighborhood weekly. Three of the branch libraries have basic access features such as accessible entrances and some reading areas accessible to people using wheelchairs. The central library and the remaining branches do not.

Following are some of the questions and issues the ADA coordinating committee might consider in evaluating the extent to which the system in its entirety is accessible and usable for people with disabilities and the steps that must be taken to achieve program accessibility:

First, the committee considers an argument presented by one committee member that the use of the bookmobile in addition to the three accessible buildings renders the system in its entirety accessible and usable. The committee rejects this, recognizing that the gap between the service offered by the bookmobile and that offered in the libraries is so large that it cannot be considered even roughly equivalent. Although the bookmobile is extremely valuable in providing access to book-borrowing, other services such as computer use, film programs, and reference assistance cannot be provided through the bookmobile.

Having established a basic standard that in order for a person with a disability to have an equal opportunity to benefit from library services he or she must have access to a library building, the committee next considers whether the three accessible libraries in the system are distributed around the city so that

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the average travel time required for a person with a disability to get to an accessible building is reasonably equivalent to the average travel time required of all people. The committee understands that the extra travel time required on average to get to an accessible library may be substantial enough so that it imposes an obstacle for some people with disabilities, limiting their opportunity to use the libraries in comparison with other residents. If the disparity in travel time proves substantial, solutions to be considered include making an additional library or libraries accessible or providing paratransit services to already accessible libraries when necessary to equalize travel time.

Next, the committee considers whether all the services and resources available in the system as a whole are available in accessible locations. The committee carries out a program analysis in which all of the activities in each library are identified by the staff of each facility. This compilation shows that the library system's total program encompasses a wide range of special activities, including children's reading groups, arts and crafts exhibitions, film programs, and reference/research assistance services. It also demonstrates that some of these activities are not available in any of the accessible libraries. Solutions to be considered by the committee include making accessible the buildings that house special activities, or providing these activities in accessible locations.

Finally, the committee must determine how accessible and usable each of the "accessible" libraries really is. The committee needs to find out whether all of the activities and resources within each of these libraries are usable by people with disabilities. One library's main entrance, reading room, and rest rooms are accessible, but the open stacks are not. Although library personnel are available to retrieve books on short notice, the number of books that can be inspected this way is far more limited than open stack browsing. Possible solutions include making the stacks accessible or installing a computer-based browsing system that gives information and reviews on each book.

This type of analysis is applied to every activity that takes place in the library.

CONDUCTING THE PROGRAM AND FACILITY ACCESS REVIEW

Title II prohibits public entities from excluding people with disabilities from programs, services, or activities because of inaccessible facilities. In order to ensure that its programs are accessible, when viewed in their entirety, the public entity should conduct a facility access review. A facility access review is a survey of facilities at which the public entity operates or administers programs, services, or activities. The review identifies physical obstacles or barriers to the participation of people with disabilities. While the regulations do not specifically require a facility access review, without such a review it is nearly impossible to comply with the self-evaluation and transition plan requirements.

All facilities that contain programs operated by or for the entity must be reviewed. This includes buildings owned or leased by the public entity as well as parks, outdoor areas, and any other facilities used in the operation of programs. Facilities used by contractors who perform public functions on behalf of the entity must also be reviewed.

Program accessibility extends to walkways. Curb cuts at existing crosswalks must also be reviewed. When people using wheelchairs are not able to travel on and between the streets, the employment, transportation, and public accommodations nondiscrimination goals of the ADA are undermined.

An entity's approach to conducting the facility access review will depend on its capacity, including expertise in architectural accessibility, staff capacity, and available time and funding.

The intent of the survey is not to evaluate compliance with an accessibility standard (UFAS or ADAAG) but to ensure overall programmatic accessibility. Approaches may vary in terms of who conducts the surveys, how the survey is conducted, and the level of accessibility reviewed. A survey might be effectively conducted by a variety of individuals once they receive the proper training. This includes facility managers, program managers or staff, members of local disability organizations, architectural access professionals, and others. If it is difficult to do this work in-house, it may be cost-effective to hire a consultant with ADA expertise.

An entity with significant capacity and expertise will be able to conduct a more detailed and comprehensive facility review than one with fewer resources. One city that started a major facility review process in the 1980s surveyed over 400 facilities, involving capital planning staff, facility managers, and others, and generated a comprehensive database to guide accessibility planning.

Entities with more limited capacity can use a different approach. A small city or department of state government, for example, might conduct a facility review by:

1. identifying all facilities
2. designating surveyor(s) for each facility
3. using a simplified survey tool
4. training staff to conduct surveys
5. combining survey results to develop a transition plan

Whichever approach is chosen, the facility access review should be managed by the ADA coordinator or a designee.

THE COORDINATED REVIEW PROCESS

After conducting the facilities review and identifying architectural and communications barriers, the next step is to determine how to achieve program access. This requires a team effort, especially when programs are conducted in multiple facilities.

Key decisions, including how to determine program access alternatives, and how to prioritize the implementation of solutions, need to be made by the compliance team. The team's analysis of the facilities survey results must be combined with a knowledge of the program. This can best be accomplished with the collaboration of facilities and program staff and with members of the disability community.

The next chapter contains a series of worksheets that will help organize and display the information needed for making decisions about program access.

PLANNING STEPS

The following planning steps will help public entities prepare to conduct a facilities review and develop a transition plan.

- **Identify appropriate staff for the facility access review.** The review requires staff with expertise to coordinate and conduct the facility access review. Examples of staff who might be important to the process include a senior staff member with capital planning responsibilities, a facility manager, or a maintenance supervisor. The curb cut review may be handled separately by the public works department. Staff who know the most about your facilities should be involved in the planning process and should work closely with the ADA coordinator in planning and conducting the review.
- **Establish the participation process for the disability community.** This participation can occur in a variety of ways. An initial meeting or series of meetings on particular programs or the programs of the entire entity can help in planning the review process. (Some or all of the individuals with disabilities who have previously been selected to participate on the compliance team will need to be involved in the program and facility review process.) The participants from the disability community can identify key issues that may not be readily apparent to staff members of the public entity. They can propose solutions that may not have been identified and can review and comment on drafts of the transition plan. Their perspectives on the impact of the barriers to program access will be essential. Their recommendations on priority-setting, selection of nonstructural and structural options, and the timing of modifications will inform the entire process. Their participation will be documented in the transition plan.
- **Identify facilities used by each activity or program.** The facility review is more efficiently conducted by looking at all facilities and their uses simultaneously. A coordinated facility review can provide the information to enable facility access and problem solving across programs.

- **Map out the usage and specialized features of each facility.** Patterns of usage will have an impact on the choice of accessibility solutions. How often a program uses a particular facility, specialized design features, and other variables are important considerations in developing accessibility solutions (Phase III below). A program that uses an accessible facility on a limited basis may be able to share the use of the space with another program. Such a solution may be more cost-effective than making structural alterations to a second facility.
- **Choose a survey tool.** A number of survey standards are available. The facility access survey should not only evaluate access for people with mobility-related disabilities but should also identify structural barriers to people with visual and hearing disabilities. The survey is not intended to evaluate a facility according to new construction standards; rather, its purpose is to identify architectural barriers to programs. The **Facility Checklist** (Worksheet 6) is a brief survey that has been adapted for use by Title II entities and is adequate for surveying most facilities for structural barriers and communication barriers. The *UFAS Checklist* (based on the Uniform Federal Accessibility Standards) is a detailed survey tool available from the Architectural and Transportation Barriers Compliance Board.
- **Incorporate capital planning information.** It is important to obtain information regarding planned alterations, closing, or other plans for each facility. Information regarding available land, planned new construction, and vacant or under-utilized facilities is also helpful in developing accessibility options.
- **Choose an access standard for alterations and new construction.** UFAS and ADAAG are acceptable standards for facility access (see Chapter 1, page 22); either or both standards may be used. Decisions can be made on a building-by-building basis. An entity can elect to use UFAS for the site and ADAAG for one or more buildings. However, once a standard is selected for a particular site or building, it must be consistently used.

Worksheets 5 through 7 help in planning, conducting, and analyzing the review of facilities. Worksheets 8 and 9 display the transition plan information.

- **Worksheet 5, Facilities Inventory**, is a management tool for identifying all of the facilities to be surveyed.
- **Worksheet 6, Facility Checklist**, is a simple survey tool that helps identify barriers and suggests modifications.
- **Worksheet 7, Summary of Inaccessible Features**, summarizes the identified barriers, providing a comprehensive list of the barriers in each facility.
- **Worksheet 8, Program Access Options**, shifts the analysis to the program level and provides a format for examining and selecting nonstructural and structural solutions to ensure program accessibility. It includes a schedule for nonstructural changes.
- **Worksheet 9, Summary of Architectural Modifications**, formats the information required in the regulations for the transition plan. It includes the schedule for both facilities modifications and for curb cuts. It also documents those structural solutions that cannot be implemented for reasons of “fundamental alteration” or “undue burden.”

Employment

TITLE II REQUIREMENTS

Title II prohibits all public entities from discriminating against qualified individuals with disabilities in employment. Covered activities include the application process, testing, interviewing, hiring, assignments, evaluation, discipline, medical examination, compensation, promotion, on-the-job training, layoff/recall, termination, leave, and benefits.

Employers are required to make reasonable accommodations to the known disability of qualified applicants and employees with disabilities. *Reasonable accommodations* are modifications or adjustments to a job application, work environments, or the way in which a job is performed to enable a qualified individual with a disability to apply for the job and perform the essential functions of the job. (Some examples are given in this *Action Guide*; further guidance can be obtained from the Disability and Business Technical Assistance Center in your area.) Accommodations that pose undue hardships (i.e., require significant difficulty or expense) for the employer need not be provided. However, the public entity must then determine if another accommodation that would be effective would be available that would not result in an undue hardship.

CONDUCTING THE EMPLOYMENT REVIEW

The specific employment regulations covering public entities are contained in Title I and are referenced in the Title II regulations, and are discussed in detail in Chapter 1. **Technical assistance on conducting the employment review is included in the *Supplement on Employment*. The self-evaluation must include a review of employment policies and practices.** Technical assistance materials for Title I compliance, including information on reasonable accommodation, produced by the National Material Development Projects on Employment funded by the National Institute on Disability and Rehabilitation Research, are available from your regional Disability and Business Technical Assistance Center. The Title I Technical Assistance Manual is available from the Equal Employment Opportunity Commission. (See Resources.)

NOTE: See the employment supplement included with this manual.

PHASE III: IMPLEMENTING MODIFICATIONS

Once the ADA coordinator and ADA team have completed the self-evaluation review and identified areas in which the public entity is not in compliance, modifications to policies, practices, procedures, and facilities must be implemented. Outlined on the following pages are procedures for making modifications and maintaining ongoing compliance.

Modifying Policies and Practices

Policies and practices identified as exclusionary or discriminatory should be modified as soon as possible. The public entity is fully liable for all discriminatory practices as of January 26, 1992, the effective date of Title II.

Example: A policy at the city pool refuses admittance to people with mobility disabilities without an attendant. This policy should be modified immediately to allow people with mobility disabilities equal access to the pool.

The public entity also needs to ensure that future policies and practices comply with the nondiscrimination requirements. New programs, services, or activities, for example, cannot be permanently sited at locations that would exclude people with disabilities. If a program or event is temporarily located in an inaccessible location, policies should be instituted to relocate to an accessible location upon request. The public entity's current operating procedures should include "reminders" to staff of the ongoing requirements.

Claiming Fundamental Alteration or Undue Burden:

When claiming that provision of an auxiliary aid or service would result in a fundamental alteration or an undue financial or administrative burden, the entity has an obligation to document the basis for its decision in a written statement and to demonstrate that all resources available for the funding and operation of the service, activity, or program were taken into consideration. The decision must be made by the head of the entity or her or his designee. Any such designee must be a high level official, no lower than a department head, having budgetary authority and responsibility for making spending decisions.

Claiming undue burden or fundamental alteration does not relieve a public entity of all obligations to provide access to people with disabilities. Even if an entity is not able to undertake a particular measure to provide access, it must find other modifications that are feasible, to ensure that it does not discriminate against individuals with disabilities in any program, service, or activity.

Some ways to build in reminders include:

- including nondiscrimination requirements in contracts
- including nondiscrimination requirements in by-laws and charges to commissions and committees
- including nondiscrimination requirements in requests for proposals
- ensuring the participation of the ADA coordinator in the development and siting of new programs, services, and activities
- including information for new employees during orientation

Developing Communication Capacity

In Phase III, the public entity will develop the capacity to provide effective communication to people with disabilities through the provision of auxiliary aids and services. Unlike the standard for nondiscrimination and program accessibility, effective communication must be provided on an individualized basis, i.e., what is *effective* will differ for each individual (see Chapter 1, pages 16–19). The entity must therefore develop the capacity to provide a range of aids and services.

In providing an auxiliary aid or service, the public entity must give primary consideration to the preferences of the individual, unless the entity can demonstrate that another equally effective means of communication is available or that the use of the preferred method would result in a *fundamental alteration* of the program, service, or activity or in *undue financial or administrative burdens*.

The development of a compliance plan for providing effective communication begins with the ADA compliance team's analysis of the communication information collected in Phase II. The team should analyze the information to determine the type and amounts of auxiliary aids and services needed by the entity as well as the most cost-effective ways to meet these needs. The team should determine whether communication capacity will be developed in-house or will be purchased through a contract with an outside agency. Some entities may find it more cost-effective to purchase copiers to make large print documents, computer software for bigger fonts, or tape recorders for creating audio tapes, or to hire staff readers or interpreters. Others will find it more cost-effective to contract with other agencies to provide sign language interpreter services or to transcribe written documents

into Braille. By looking at the entity as a whole—rather than by individual departments—the team may be able to formulate more cost-effective solutions.

Worksheet 4, Communication Summary and Action Plan, provides a structure to organize and display information from each program, and to document the plan for additional services.

This planning process can assist the entity in developing estimates of the need for aids and services to ensure equally effective communication. In order to refine these estimates, the entity can track the use of aids and services by people with disabilities over time in order to reflect the actual usage and need.

In addition to responding to requests for aids and services, the entity must have the capacity in place to communicate by telephone with people with hearing and speech disabilities. The ADA team can use the communication information obtained during Phase II to determine the number of TDDs needed and in what circumstances using a relay service will be equally effective. When a TDD is installed, all employees who answer the phone must be trained in its use. In addition to learning how to place and receive calls using the TDD, employees should learn the basics of TDD etiquette.

The public entity must also provide information regarding the availability and location of accessible programs, services, activities and facilities. In addition to signage, this information can be provided through the public entity's consumer services handbook, in the telephone directory, or by other methods currently used by the entity.

Creating Program and Facility Access

Barriers to program accessibility can be removed in a variety of ways, some of which involve structural changes and some of which do not. Congress did not intend that public entities expend large sums of money to retrofit buildings and facilities where other effective means of achieving equal opportunity to participate are available. The Department of Justice, therefore, encourages innovation and creativity in eliminating barriers as long as the means used provide people with disabilities equal opportunity to participate in and benefit from a public entity's programs.

The regulations require that public entities provide auxiliary aids and services upon request. However, sometimes it may be useful or necessary to provide information in alternative formats proactively. Documents used regularly for a program, service or activity, for example, can be made readily available in Braille, large print and/or audio tape formats.

The experience of numerous public agencies indicates that continuous staff training in the use of TDDs is necessary to ensure effective communication. Once is not enough.

Limitations on the Program Accessibility Requirement:

A public entity does not have to take any steps that would result in a fundamental alteration in the nature of its programs or activities or in undue financial or administrative burdens. (See discussion of fundamental alteration and undue burden, page 80) If this situation exists, in relation to program accessibility, it should be explained in the transition plan and signed off by an official with budgetary authority.

Where the facility access review identifies programs and facilities as inaccessible, the public entity must take steps to make the programs accessible. As described above, the regulations do not require structural modifications to facilities in order to create access to programs, services, or activities. If they create program accessibility, nonstructural methods are equally acceptable and should be considered before structural changes. The standard is that the program, when viewed in its entirety, must be readily accessible to and usable by people with disabilities.

For each program or service identified as inaccessible, the ADA team should brainstorm a list of the possible access solutions. The solutions may include:

- relocating within the facility
- moving to another facility
- bringing the program to the participant
- adapting equipment
- assigning additional staff
- altering facilities
- constructing new facilities

The team should develop a list of criteria to help them compare and choose among options. Some of the criteria that are important to consider include:

- **Cost.** The team should consider both the short- and long-term costs of each option as well as the sources of funds. The entity may have funds available for operations but not for capital improvements or vice versa. Existing capital or alteration plans should be considered in estimating costs. Making structural changes may not be as difficult when considered in the context of capital or alteration plans that are scheduled or in process. Some structural solutions may be small in scale and able to be accomplished through operations budgets.
- **Integration.** Integration is a fundamental principle of the ADA. Priority should be given to methods supporting the integration of people with disabilities into programs and activities providing interaction with people who do not have disabilities. Offering a home visit in lieu of participation in a continuing education class at one of the libraries would not be acceptable, since interaction among members of a class is an essential aspect of the educational process. On the other hand, offering a

home visit as an alternative to meeting with a single staff member whose office is in an inaccessible location may be appropriate, since social integration is not significantly diminished as a result.

- **Preferences.** As discussed throughout the *Action Guide*, listening to and incorporating ideas and concerns of people with disabilities is very important to creating successful programmatic and structural access solutions.

The entity may also have other considerations, such as the need for neighborhood-based programs or the non-monetary costs associated with moving a large program.

Historic Preservation Programs

Title II provides special provisions for historic preservation programs and historic properties. Historic preservation programs are defined as programs conducted by a public entity that have as their primary purpose the preservation of historic properties. Historic properties are defined as properties listed or eligible for listing in the National Register of Historic Places or properties designated as historic under state or local laws.

Like all other public entity programs, historic preservation programs must be made accessible to people with disabilities. The regulations encourage public entities to prioritize methods that provide physical access. However, **the regulations do not require any action that would threaten or destroy the historic significance of the property.**

Programs that are located in historic buildings but whose primary purpose is not preservation are not entitled to this exemption. This means that such programs cannot continue to operate *solely* in an inaccessible historic site, unless changes are made to make the program accessible.

Historic preservation programs that cannot be made physically accessible must use alternative methods of providing access, such as using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible.

Structural communication elements identified in Phase II should be incorporated as part of the transition plan along with the architectural modifications needed to improve the accessibility and usability of facilities and walkways.

Solutions that do not require structural changes include relocating a program, service, or activity, adapting equipment, or implementing staff changes. These changes should be made as expeditiously as possible.

Plans for structural changes must be incorporated into the transition plan. At a minimum, a transition plan should include:

- a list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities
- 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 with Title II (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)
- the schedule for providing curb cuts, if the public entity has responsibility over streets, roads, or walkways.
- the name of the official responsible for the plan's implementation

CAPITAL PLANNING

Title II obligations are ongoing. Once the transition plan is in place, the entity must ensure that all required modifications are made in a timely manner. To accomplish this, the public entity's periodic capital planning and budgeting process must go hand-in-hand with the transition plan.

Many units of government have long-range capital plans for facilities they own; barrier removal projects can often be planned to coincide with other scheduled capital improvements. The involvement of facilities management staff in the transition plan is essential for cost-effective implementation and ongoing capital planning. The experience of many government entities has been that incorporating access into planned rehabilitation is cost-effective and often no more expensive than the original alteration plans that did not address accessibility.

FUNDING FOR STRUCTURAL MODIFICATIONS

As discussed above, one of the primary concerns of state and local government units is identifying funds to make the structural changes outlined in the transition plan. Current fiscal constraints at both the state and local level mean that public entities must achieve compliance with limited resources.

Unfortunately, there are no magic answers or unlimited sources of funds to assist public or private agencies in achieving ADA-required accessibility. What follows is a list of some of the funding sources currently available for access modifications.

Funding for Accessibility

PUBLIC ENTITIES

Community Development Block Grant Funds (CDBG)

CDBG funds can be used by governmental units to increase accessibility. CDBG funds can be used in buildings in which *services to the public are provided on-site*, such as police stations or “mini city halls” in low-income neighborhoods. CDBG funds can also be used to create accessible parking, streets, curbs, sidewalks, playgrounds, and parks. However, CDBG funds cannot be applied toward buildings used for the general conduct of government, such as administrative offices, where the public does not enter. (For more information, see Resources.)

Land and Water Conservation Funds

The U.S. Department of the Interior provides funds on a competitive basis to states and municipalities to acquire or improve recreation areas, outdoor parks, playgrounds, and other areas. Funds can be used to make access improvements.

PRIVATE NONPROFIT SERVICE CONTRACTORS

Community Development Block Grant Funds (CDBG)

CDBG funds can be used to create access at privately owned facilities that benefit people with disabilities. Funds can be used to build ramps, modify bathrooms, and make other needed structural changes.

State/Local Government Funds

State and local government units may consider using their own funds as loans or grants to assist contractors in making programs accessible.

Foundations and Charitable Organizations

Many foundations and charitable organizations will fund access modifications to buildings owned by private

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continued

nonprofit organizations that serve people with low and moderate incomes. Private businesses and fraternal organizations such as the Rotary Club may also be willing to provide funds.

Tax Incentives

Nonprofit organizations that are contractors for public entities cannot benefit directly from the ADA tax incentives described below. However, where nonprofits lease space from for-profit owners, the owner can make the access modifications and benefit from the tax incentives. Combining the tax incentives with some funds provided by the nonprofit, an owner may be willing to make the required changes.

FOR-PROFIT SERVICE CONTRACTORS

There are two tax incentives available to private businesses making access improvements. These can be used in combination. (For more information on tax incentives, request ADA Title III Fact Sheet 4, "Tax Incentives for Accessibility Improvements" from your Disability and Business Technical Assistance Center.)

ADA Tax Credit (Section 44 of the IRS Code)

Small businesses with either annual revenues of \$1 million or less or 30 or fewer full-time employees are entitled to a tax credit for providing a variety of access services. These include the provision of readers, the purchase of adaptive equipment, and the removal of architectural barriers in facilities or vehicles. (Alterations must comply with applicable accessibility standards.) Qualifying businesses may claim a credit of up to 50% of eligible access expenditures that exceed \$250 but do not exceed \$10,250. The maximum credit yearly is \$5000.

Tax Deduction (Section 190 of the IRS Code)

A business of any size may use this deduction for the removal of architectural and transportation barriers. The renovations must comply with applicable accessibility standards. The maximum tax deduction is \$15,000 per year.

INSTITUTIONALIZING COMPLIANCE

Mechanisms to ensure effective institutionalization of ADA compliance are thoroughly integrated into the approach to planning and implementation presented in the *Action Guide*. The key to the whole effort to introduce long-term, effective institutional change, however, is to forge a strong link between compliance planning and staff development.

The ability to effectively integrate the changes identified in the self-evaluation process into ongoing operations will depend to a great extent on the informed cooperation of staff at all levels of the organization. It is essential both that staff members support the purpose and values behind the changes being introduced and that they have confidence that new policies and procedures are workable and effective in achieving the desired results.

Encouraging broad staff participation in the assessment of existing conditions and resources at the program level makes it possible to promote understanding of the goals of the ADA while formulating the most effective ways to eliminate barriers and provide for full participation. Some entities, such as the City of Austin, have included formal disability awareness training in their compliance programs, while others have taken a less structured approach to promoting discussion among staff on the meaning and value of the ADA.

Following are some ways in which staff development can be integrated into the compliance effort:

- In recruiting the compliance team, include a number of “opinion leaders”—staff members whose influence derives not so much from the positions they hold as from the personal esteem in which they are held by their co-workers. Such individuals can be invaluable in creating a positive climate for change and innovation.
- The ADA coordinator, members of the compliance team, and the departmental liaisons can set an open tone for the compliance effort by sharing information, promoting staff involvement in the self-evaluation, providing forums for discussion, and developing training programs as needed.

- People with disabilities, whether members of the staff or from the larger community, can be invited to bring the power of personal perspective to discussions of the meaning of the ADA and the experience of discrimination.

Staff development, like ADA compliance itself, is not a one-time proposition. It will not be “finished” when the self-evaluation is over or when the last piece of the transition plan has been completed. Institutionalizing compliance means that new staff members will need to be trained, ongoing performance evaluated, and problems identified and corrected as they arise.

Self-Evaluation and Transition Plan Worksheets

Overview

These worksheets have been designed for use by a wide range of public entities carrying out self-evaluations and preparing transition plans. The organization of the worksheets reflects the approach to compliance planning described in Chapter 3, and covers three areas: the general discrimination prohibitions, effective communication, and facility access. Worksheets covering the employment review are in the *Supplement on Employment*.

The worksheets provide a structure for organizing and managing the compliance planning process, gathering and analyzing information, and documenting decisions about action steps. The worksheets can and should be adapted to fit the unique needs and preferences of each entity. They should be carefully reviewed and revised by the ADA coordinator and compliance team to ensure that they capture all useful information and display it in a way that facilitates the team's analysis and decision making. The worksheets do not stand alone. In order to use them effectively, the ADA coordinator and the compliance team must be familiar with the rest of the *Action Guide*.

When completed, Worksheets 1 through 7 document the self-evaluation and Worksheets 8 and 9 provide the basis for developing the transition plan. Title II requires that entities with more than fifty employees keep the self-evaluation and transition plan on file and available for public inspection for three years. The self-evaluation was to have been completed by January 26, 1993 and immediate action that involves nonstructural change should be taken to eliminate all impediments to full and equivalent participation that are identified. The structural changes that are listed in the transition plan were to have been made as expeditiously as possible but no later than January 26, 1995.

The following is an overview of the worksheets with suggestions for their use. The convention followed in the worksheets is to refer to three organizational levels: entity, department, and program. The compliance team can adopt any other scheme that better suits local conditions.

For the convenience of the user, the cover sheets for each worksheet repeat these explanations and include additional instructions.

WORKSHEET 1 • DEPARTMENT OR PROGRAM LISTING

The first worksheet is a management tool that can be duplicated for use by the ADA coordinator and by department liaisons. It should be reproduced and used for tracking participation at several levels. The ADA coordinator should list departments or other major organizational units and the liaisons from each to the compliance team (see Chapter 3, page 56). Department liaisons can identify all programs for which they are responsible and the name of the staff person within each program with lead responsibility for self-evaluation activities.

The worksheets can also be used throughout the self-evaluation to track progress in the completion of tasks and to document the participation of people with disabilities.

WORKSHEET 2 • GENERAL POLICIES AND PRACTICES REVIEW

This is a multi-page worksheet designed to support the review of written policies and operating practices in order to identify and change any that violate Title II's general prohibitions against discrimination. The general prohibitions have been grouped into four sets of questions about internal program operations and two sets on external relationships with contractors and others. The organization of the general prohibitions into these sets of questions is intended to facilitate both the review and any staff orientation and training activities through which the entity communicates its expectations about the inclusion of people with disabilities.

One copy of the worksheet should be completed by staff members of each program, following an orientation by the department liaison or other representative of the compliance team. Liaisons should provide support to program staff and should review completed worksheets and discuss them with the compliance team to identify and resolve problem areas.

WORKSHEET 3 • COMMUNICATION ACCESS ASSESSMENT

This multi-page worksheet is designed to be used by programs in assessing and documenting their current ability to provide equally effective communication to people with visual, hearing, speech, and cognitive disabilities. This information is broken down into two categories: visual communication and aural/oral communication. (See Chapter 1, pages 16–19, and Chapter 3, pages 64–67, for a discussion of effective communication.) Some communication barriers are structural, and may be addressed through the program accessibility analysis. A copy of the worksheet should be distributed to staff members of each program by the department liaison, who also provides orientation and support as needed.

The worksheet also documents the availability of TDDs, procedures for responding to requests for auxiliary aids and services, procedures for emergency evacuations, and the communication of facility access information.

Completed worksheets are submitted by all programs to the department liaison, who will summarize the data using the next worksheet.

WORKSHEET 4 • COMMUNICATION SUMMARY AND ACTION PLAN

This worksheet may be used at two levels. First, the liaisons can use it to review and compile information from all copies of Worksheet 3 submitted by programs in the department. A departmental summary is then submitted to the ADA coordinator and compliance team, who generate a master summary of the communications functions, resources, and needs of the whole entity. Analysis of the master summary by the coordinator and compliance team provides a foundation for developing an entity-wide communication resources plan. An important part of this planning process is to determine whether resources can most effectively be provided (a) locally (within individual program units); (b) from a central source within the department or entity; or (c) from a contractor or provider outside the entity. This worksheet also documents those situations in which the provision of effective communication would result in a fundamental alteration of the program or in undue financial or administrative burdens.

WORKSHEET 5 • FACILITIES INVENTORY

This worksheet is a management tool for organizing and monitoring the review of facilities at either the entity or department level, depending on the size and structure of the organization. It can be used either by the ADA coordinator or department liaisons to:

- compile a list of all facilities owned or leased by the entity or department in which programs are provided
- record capital planning information on additions, new construction, or renovation of facilities that will affect program operations
- describe any unique features of each facility that are necessary for the operation of programs provided at that location

Once the inventory is completed, the compliance team and department liaisons can use it to assign responsibility for surveying facilities to staff with appropriate skills and experience.

WORKSHEET 6 • FACILITY CHECKLIST

This worksheet is a brief survey tool that can be used to identify architectural barriers, as well as communication barriers that are structural in nature, that may limit access to programs. Other survey instruments may be used, such as the more exhaustive *UFAS Checklist*. (Note that Title II does not require that existing facilities be retrofitted for full compliance. It does require that programs, when viewed in their entirety, be readily accessible to and usable by people with disabilities.)

The purpose of the checklist is to enable public entities to identify substantial barriers to the access and use of each facility. The compliance team or department liaisons can distribute copies of the worksheet, provide any necessary orientation and training, and monitor the progress of staff or consultants in carrying out the survey of facilities.

WORKSHEET 7 • SUMMARY OF INACCESSIBLE FEATURES

This worksheet can be used to summarize information about barriers identified in each facility using any survey tool, and to evaluate the severity and functional impact of each barrier. One worksheet should be completed for each facility and submitted to the department liaison or the compliance team by the staff person with lead responsibility for the survey. The summary information will be used by the compliance team to analyze which barriers must be removed to meet the program accessibility requirement

and to decide whether targeted barriers would be most efficiently removed through architectural modifications or through nonstructural program changes.

WORKSHEET 8 • PROGRAM ACCESS OPTIONS

This worksheet is designed to be used in conjunction with Worksheet 7 to determine which barriers are best removed through structural modifications and which through nonstructural means. Barrier information, previously summarized by facility on Worksheet 7, is reorganized here in terms of programs. On this worksheet, all facilities where a particular program is provided are listed and the significant barriers in each are indicated.

The dual perspective provided by the two worksheets may make it possible for the ADA coordinator and compliance team to more easily analyze the potential effectiveness of nonstructural barrier removal options in achieving program accessibility. Once this analysis has been completed, the worksheet can be used to describe all nonstructural solutions adopted and to define a schedule for their implementation.

A draft of Worksheet 8 should be completed by the ADA coordinator and compliance team. An opportunity for review and comment should then be provided to people with disabilities and other interested parties. This completed worksheet, along with Worksheet 9, will provide the basis for the transition plan.

WORKSHEET 9 • SUMMARY OF ARCHITECTURAL MODIFICATIONS

This worksheet can be used to identify barriers that must be removed, the specific structural changes required, cost estimates, and the proposed completion date of modifications. The first section of the worksheet is for barriers in facilities and the second section is for curb cuts and curb ramps that provide access to the entity. The third section identifies any barriers that cannot be removed because to do so would pose undue administrative or financial burdens. A thorough explanation of the undue burden claim must be given.

The entity is required to designate an official responsible for implementing the transition plan; a space is provided on the worksheet for the name and title of this individual. A draft of

the transition plan should be completed by the person responsible for its implementation, with the assistance of the compliance team. Individuals with disabilities and other interested parties must then be given an opportunity to comment on the draft before it is made final. A public meeting, while not required, is recommended for soliciting reactions to the draft transition plan. (This can be combined with a review of the draft of Worksheet 8, which describes proposed nonstructural barrier removal solutions.)

Any determination that programs cannot be made accessible without creating undue burdens or fundamentally altering the program must be authorized by a high-ranking official with budgetary responsibility.

The worksheets in this section are masters, and are not to be filled in. Before distributing and completing the worksheets, photocopy the entire set, then reproduce as many as needed.

DEPARTMENT OR PROGRAM LISTING

1

The first worksheet is a general management tool to organize and monitor the self-evaluation process. It is used to identify the organizational units taking part in the self-evaluation and the staff members responsible for compliance activities. It is also used to monitor the completion of tasks and to document the participation of people with disabilities and other interested parties.

This worksheet can be utilized in at least two levels of the entity. The ADA coordinator can identify departments or other major organizational units and the liaisons from each to the compliance team. Department liaisons can list all programs within the department and the staff person within each responsible for self-evaluation activities.

The columns headed "Self-Evaluation Dates" are for tracking the four main areas of the self-evaluation: employment, general prohibitions against discrimination, communication, and facility access. The target date for the completion of the review on each area can be entered at the beginning of the process, and a check (✓) added when the task is completed and the relevant worksheets submitted.

The second page of the worksheet is for documenting the participation of individuals from outside the entity. All such individuals and their organizational affiliations should be listed in the upper section. In the lower section, the participation of people with disabilities should be described. This description should be updated as necessary throughout the process.

DEPARTMENT OR PROGRAM LISTING

Title II entity _____ Total number of depts. or programs _____

Worksheet completed by _____ Telephone _____ Date _____

[illegible]

Persons Participating in Self-Evaluation

List the individuals participating in the self-evaluation.

Name

Affiliation

Describe the participation of people with disabilities in the self-evaluation. Specify the self-evaluation component in which they participated (i.e., employment, general prohibitions against discrimination, communications, or facilities).

Public entities are required to review both written policies and the actual operating practices used in programs and activities, to ensure that people with disabilities are not discriminated against. Title II contains broad prohibitions against discrimination, addressing issues of equal opportunity, integration, eligibility, methods of administration, relationships with contractors, location of facilities, licensing, and others. The general prohibitions are discussed in detail in Chapter 1.

In order to facilitate the gathering of information and the communication of these complex legal requirements to program staff, this worksheet groups the majority of the prohibitions into four sets of questions addressing internal program operations and two sets of questions addressing external relationships. (See Chapter 3 for a full explanation of the topics covered in each set of questions.) The topics covered are:

Internal Program Operations

- Equal opportunity to benefit
- Reasonable program modifications
- Surcharges and additional requirements
- Integrated settings and separate programs

External Relationships

- Contracting with external organizations
- Licensing and certification

This worksheet can be used to review the written policies and actual operating procedures of each program and activity to identify potentially discriminatory practices. One worksheet should be completed by staff members of each program and submitted for review to the department liaison, who will then bring it to the ADA coordinator and compliance team to ensure that any discriminatory practices are modified appropriately.

NOTE: Whenever a question is not applicable, please note N/A.

Title II entity _____ Program _____

Worksheet completed by _____ Telephone _____ Date _____

Location

List all facilities or other locations where the program operates on a regular or incidental basis. (Use additional sheets if necessary.)

Description of Program

Describe the purpose, scope, type of activities, number and type of participants, and other key information about the program (or attach existing descriptive information).

INTERNAL PROGRAM OPERATIONS

Equal Opportunity to Participate and Benefit

- a) A public entity may not deny a qualified individual with a disability an opportunity to participate in and benefit from any program. (Example: A public library may not refuse to allow a person with a cognitive disability the use of library facilities.)
- b) A public entity may not afford an opportunity that is not equal to or not as effective as that provided others. (Example: A public recreation facility may not restrict the hours during which people with limited vision may use the facility to be less than the hours open to the general public.)
- c) A public entity may not impose eligibility criteria for participation in programs that screen out people with disabilities either directly or indirectly, unless such criteria are necessary for the provision of the program's activities. (Example: A scuba diving class cannot exclude people who use wheelchairs based on the assumption that people who use wheelchairs cannot swim well enough. However, the scuba class may require that all participants pass a swimming test if swimming is needed for safe participation in the class.)

Are there any circumstances in which the participation of a person with a disability in the program would be restricted or excluded? ☐ Yes ☐ No

If so, please describe.

Are any of these exclusions or restrictions necessary to the operation of the program or to the safety of the participants who do not have disabilities? ☐ Yes ☐ No

If so, please explain.

Reasonable Program Modifications

Public entities are required to make reasonable modifications to policies or practices in order to avoid discrimination towards people with disabilities. A modification is not required, however, if it would fundamentally alter the nature of the program or activity.

Are staff aware that it may be necessary to modify program policies or practices to enable people with disabilities to participate in and benefit from the program? ☐ Yes ☐ No

Is the public informed that the program is prepared to make reasonable modifications? ☐ Yes ☐ No

If so, please describe.

Does the program have a formal or informal process for responding to requests for modifications?
☐ Yes ☐ No

If so, please describe.

Does the program have a process for determining whether a policy or practice modification would fundamentally alter the nature of the program? ☐ Yes ☐ No

If so, please describe.

Surcharges and Additional Requirements

Public entities may not impose extra charges upon people with disabilities to cover the costs of effective communication, program modifications, or access features, and may not impose any additional requirements or burdens on people with disabilities that they do not require of all other participants in the program. (Example: A public park may not require that a person with a disability bring a personal assistant in order to participate in a recreational program.)

Are there any circumstances in which a person with a disability would be asked to pay a fee or meet any other requirements not imposed on other program participants? ☐ Yes ☐ No

If so, please describe.

Integrated Settings and Separate Programs

Promoting integration is a fundamental principle of the ADA and public entities are required to provide programs and activities in the most integrated settings appropriate to the needs of people with disabilities.

Separate programs or activities are permitted only when necessary to ensure equal opportunity. When separate programs are provided, qualified people with disabilities still cannot be excluded from participating in regular programs if they choose to do so. (Example: A town recreation program offers a swimming session once a week in which volunteer instructors provide individualized assistance to people with physical disabilities. People with physical disabilities may choose to participate in the assisted program or in the regular swim sessions where no individual assistance is provided.)

Does the program provide any separate activities for people with disabilities? ☐ Yes ☐ No

If yes, please describe how the separate activity contributes to affording people with disabilities an equal opportunity to benefit.

Are there any circumstances in which a person with a disability would be prohibited from participating in regular (non-separate) activities because of the provision of separate activities? ☐ Yes ☐ No

If yes, please describe.

EXTERNAL RELATIONSHIPS

Contracting with External Organizations

When a public entity contracts with another organization to provide programs and services to the entity's constituents the public entity retains responsibility for ensuring that the contractor provides the services and activities in a nondiscriminatory manner consistent with the requirements of Title II.

List any contractors who provide services, benefits, or activities on behalf of the program (or attach separate sheet if necessary).

Has the program notified each contractor of its responsibilities for providing contracted services in a nondiscriminatory manner and has the program required assurances from contractors of their fulfillment of Title II nondiscrimination and access requirements? ☐ Yes ☐ No

If so, please describe both the notification process and the process by which the entity will ensure compliance.

Procurement Contracts

In selecting procurement contractors, a public entity may not discriminate on the basis of disability. (Example: A food supplier could not be denied a contract to supply the entity's cafeteria because a delivery person has AIDS.)

Are there any circumstances in which a consideration related to disability would influence the choice of a procurement contractor? ☐ Yes ☐ No

If so, please explain.

Licensing and Certification

Public entities may not deny a license or certification to any person with a disability who meets the essential eligibility requirements for that license or certification. Eligibility requirements cannot include criteria that directly or indirectly screen out people with disabilities unless the criteria are necessary to the performance of the activity that is the object of the license or certificate.

List any licenses or certifications that the program issues.

List any eligibility criteria that may tend to screen out people with disabilities—for example, criteria related to physical or mental fitness or performance, safety standards, or insurability requirements.

For each potentially exclusionary criterion, identify how the criterion is necessary to the performance of the activity to which the license or certificate applies.

COMMUNICATION ACCESS ASSESSMENT

3

This worksheet is designed to be used by programs in assessing their current ability to provide effective communication to people with disabilities and to document other communication issues. The department liaison should distribute a copy of the worksheet to staff members of each program. It is recommended that the liaison hold an orientation meeting with the assistance of the ADA coordinator, if necessary, to explain the concepts of effective communication and auxiliary aids and services and the purpose of the information called for in the worksheet.

The first part of the worksheet is completed by filling in two charts corresponding to two major categories of communication barriers:

- 1) **Visual.** Print materials, visual displays, and signage may present barriers to people with limited vision or cognitive impairments.
- 2) **Aural/oral.** "Aural" refers to information that is heard; "oral" refers to spoken communication. These types of communication may be barriers for people who have hearing or speech disabilities.

On the left-hand side of the chart, list all types of information in each communication category that are involved in the operation of the program. Consider all aspects of the program, including outreach, advertising, application processes, daily operation, public meetings, and special events. On the right-hand side are columns with the names of common auxiliary aids and services. Place a check (✓) in a box to indicate auxiliary aids or services that are currently provided or available. Place an X in a box to indicate additional aids or services that may be necessary to ensure effective communication.

The second part of the worksheet (pages 3–6) contains questions on:

- Primary consideration (responding to requests for aids and services)
- Telephone communications and the use of TDDs
- Access information
- Emergency warnings and evacuation procedures

Completed worksheets should be submitted to the department liaison, who will summarize them and review them with the compliance team. Solutions to the problems identified will be recorded on Worksheet 4.

Title II entity _____ Program _____

Worksheet completed by _____ Telephone _____ Date _____

COMMUNICATION ACCESS**Visual Communication**

Information that is communicated visually—such as through printed materials or visual displays—must be made accessible to people with visual and cognitive disabilities through auxiliary aids and services.

Does the program involve information that is communicated visually? ☐ Yes ☐ No

In the chart below, list each type of information that is communicated visually. Consider all aspects of the program, including outreach, advertising, public meetings or hearings, and communication with the general public, applicants, and participants. Examples may include brochures, forms, handbooks, slide shows, video tapes, and visual displays.

For each type of information, place a check () below the auxiliary aids or services currently available to people with visual disabilities. Place an X below any additional aids or services that may be necessary to provide effective communication of the information. (More than one auxiliary aid or service may be needed for each.)

Types of information:	large print	Braille	audio tape	readers	verbal descriptions	computer diskette	pictorial signage	other
1. _____								
2. _____								
3. _____								
4. _____								
5. _____								
6. _____								
7. _____								
8. _____								
9. _____								
10. _____								

Aural/Oral Communication

(Note: "Aural" refers to information that is heard; "oral" refers to spoken information.)

Programs that communicate information aurally to applicants or participants or that require an applicant or participant to use oral communication must make that information accessible to people who have hearing or speech disabilities by providing auxiliary aids and services.

Does the program involve information that is communicated verbally? ☐ Yes ☐ No

In the chart below, list each type of information that is communicated aurally/orally. Consider all communication involved in all aspects of the program, including outreach, advertising, public meetings or hearings, television programs or video tapes, and communication with the general public, applicants, and participants.

For each type of information, place a check () below the auxiliary aids or services currently available to people with hearing or speech disabilities. Place an X below any additional aids or services that may be necessary to provide effective communication of the information. (More than one auxiliary aid or service may be needed for each.)

Types of information:	sign language interpreters	TDD	paper and pen	CART ("real-time")	caption decoder	other
1. _____						
2. _____						
3. _____						
4. _____						
5. _____						
6. _____						
7. _____						
8. _____						
9. _____						
10. _____						

Primary Consideration

Title II's regulations require that public entities provide people with disabilities an opportunity to request the type of communications technology and assistance they prefer to use. In the ADA regulations, communications technology and assistance are called *auxiliary aids and services*.

An entity must give primary consideration to an individual's preference for an auxiliary aid or service and must honor it unless the entity can provide another *effective* means of communication. (See the discussion of effective communication on pages 16–17 of the *Action Guide*.)

A public entity is not required to provide an auxiliary aid or service if it would result in a fundamental alteration to the program or in undue financial or administrative burdens.

Does the program inform people with disabilities that communication aids or services are provided upon request? ☐ Yes ☐ No

If so, please explain.

Does the program have a procedure for deciding which auxiliary aid or service to provide? ☐ Yes ☐ No

Does the procedure provide for consideration of an individual's preferred aid or service? ☐ Yes ☐ No

Does the procedure include a mechanism for determining that an aid or service provided other than the requested aid or service is an effective means of communication? ☐ Yes ☐ No

If the answer to any of these three questions is yes, please describe. (For questions answered no, solutions will be addressed in Worksheet 4.)

TELECOMMUNICATIONS

Telephone Communication

When a public entity communicates with the public by telephone, Title II requires that TDDs or equally effective means be used to communicate with people who have hearing or speech disabilities. Title IV of the ADA mandates that telephone companies develop telephone relay systems, which may be effective for short, uncomplicated communications. Public entities should use TDDs wherever telephone communication is a substantial part of a program's operation. Your answers to the following questions will help you determine whether a TDD may be essential for your program.

Does the program communicate with the public over the telephone? ☐ Yes ☐ No

What kind of information is communicated by phone?

Are telephone communications ever lengthy, complex, or technical? ☐ Yes ☐ No

Does the program have a TDD? ☐ Yes ☐ No

If not, solutions will be addressed in Worksheet 4.

If so, has the staff been trained in the use of the TDD? ☐ Yes ☐ No

Please describe.

Telephone Emergency Services

If the program provides telephone access to emergency services, the regulations require that direct access (to the same number(s)) be provided to individuals who use TDDs; relying on a relay service is not acceptable.

Does the program provide telephone access to emergency services? ☐ Yes ☐ No

If not, solutions will be addressed in Worksheet 4.

If so, does the program provide direct TDD access to the emergency telephone number(s)? ☐ Yes ☐ No

OTHER COMMUNICATION

Emergency Warning and Evacuation

Emergency evacuation procedures for the program, service, or activity must ensure that people with disabilities are made aware of emergencies and are aware of exit procedures.

Is there a means of assuring that people who are hard of hearing or deaf are made aware of an activated alarm? ☐ Yes ☐ No

If not, solutions will be addressed in Worksheet 4.

Is there an established emergency evacuation procedure that addresses the needs of individuals with disabilities? ☐ Yes ☐ No

If not, please describe the procedures the program will use in facilities where means of egress are not accessible to provide safety and evacuation for people who cannot use stairs.

Do staff members receive training in emergency evacuation procedures? ☐ Yes ☐ No

Please describe.

Access Information

The Title II regulations require that public entities ensure that people with disabilities can obtain information about the availability and location of accessible programs, services, activities, and facilities. Information regarding the location of accessible entrances, programs sites, TDDs, and other access features can be provided in a number of ways, such as in handbooks and listings.

Explain how the program, service, or activity will provide access information to program applicants, participants, and the general public.

This worksheet is designed for use at two levels. It can be used by department liaisons to summarize the Communication Access Assessment (Worksheet 3) prepared by individual programs. The ADA coordinator and compliance team can then generate an overall entity summary.

The overall summary should provide a fairly comprehensive picture of the entity's communication resources and needs. This information can then be analyzed to guide the development of system-wide effective communication resources.

The analysis can target three general types of communications resource development strategies:

- 1) **Local.** Establish procedures for optimum sharing of existing or new communications resources at the program or department level, such as copying machines that can enlarge documents to produce large print or personal computers that can generate diskettes in ASCII format.
- 2) **Central.** Distribute centrally located resources throughout the entity. For example, provide access to a computerized Braille, a real-time transcription service, and an audio cassette production service for all departments and programs.
- 3) **External.** Establish standards and procedures for contracting for communications services from sources outside the entity, such as for sign language interpretation.

This worksheet also documents those situations in which the provision of effective communication would result in a fundamental alteration of the program or in undue financial or administrative burdens.

Outside
sources (list)

[illegible]

Needed Auxiliary Aids and Services

Summarize needed auxiliary aids and services to be purchased or contracted. Place an asterisk (*) next to those that will be provided upon request; all others should be available at all times. (Use additional sheets if necessary.)	Where might these be provided?		
	Within program	Central location	Outside sources (list)

Primary Consideration

Public entities must give each individual with a communications impairment an opportunity to request the auxiliary aid or service of his or her choice. That choice must be given primary consideration and must be honored unless the entity can demonstrate that another equally effective means of communication is available or that the auxiliary aid requested would result in a fundamental alteration in the program or in undue financial or administrative burdens.

Summarize a standardized process for individuals to express their preferences for a particular type of auxiliary aid or service, and the process to ensure that an auxiliary aid or service is provided.

TDD Communications (Existing and Needed)

List programs that now have TDDs and identify programs for which TDDs should be provided. Identify those programs that provide emergency services for which TDDs will be provided.

Summarize plans for training staff in TDD use.

Emergency Warning Systems

Describe emergency warning systems and procedures, where they are located, and where they will be added or modified.

Access Information

Describe how information on access will be communicated to the public and throughout the entity.

Fundamental Alteration and Undue Burdens

List auxiliary aids or services for effective communications that will not be implemented, because to provide them would cause a fundamental alteration to the program or undue financial or administrative burdens. (Use additional sheets if necessary.)

Program	Description of needed auxiliary aids and services, other communication issues	Cost estimate	Explanation of fundamental alteration OR undue financial or administrative burden

FACILITIES INVENTORY

5

This worksheet is the first of five used in assessing facility accessibility leading to development of the transition plan.

The Facility Inventory is a management tool for organizing and monitoring the review of facilities. It can be used:

- a) to compile a list of all facilities owned or leased by the entity in which programs are operated and
- b) to record information about each facility that will be useful later in planning and prioritizing modifications.

A small entity may be able to compile a complete list of facilities on a single worksheet; larger entities should distribute copies of the worksheet to departments, divisions, or other units of analysis chosen by the compliance team.

The name of the facility is entered in the first column. In the next column, list all programs provided in the facility and identify the major types of activity involved, such as providing information or documents to individuals, holding public meetings, or presenting recreational events. Next, state the frequency of each type of activity.

In the next column, note any planned capital improvements. Also note any unusual characteristics of the facility necessary or useful for particular activities, such as having sufficient room for large group meetings, a public address system for public hearings, kitchen facilities for cooking classes, etc. In the last column, enter the date when the survey of the facility is scheduled and the date when the survey is completed.

The names of facilities can be filled in by the compliance team and/or departmental liaisons. Worksheets should then be distributed to staff members familiar with both the physical condition of the facilities and the operation of the programs in each. This will often necessitate assigning the completion of the worksheet for a particular facility or group of facilities to a work group of individuals with complementary backgrounds.

NOTE: Facilities or portions of facilities not open to the public and used only by employees do not need to be inventoried or surveyed.

Title II entity _____ Department or sub-unit _____

Worksheet completed by _____ Telephone _____ Date _____

Facility	Programs/services provided	Frequency of use (daily, weekly, monthly)	If capital improvements are planned, provide date. Also note any unique features of the facility.	Schedule of survey

FACILITY CHECKLIST

6

This worksheet is one of the survey instruments that can be used in identifying barriers that limit access and use of facilities. The Facility Checklist can be used by public entities to identify architectural barriers and communication barriers that are structural in nature. Space is provided to record the actual measurements taken, and ideas for structural modifications are listed. (Where structural changes are determined to be necessary, they will be included in the transition plan later in the process.) A more exhaustive survey tool is the *UFAS Checklist* (based on the Uniform Federal Accessibility Standards), available from the Architectural and Transportation Barriers Compliance Board (ATBCB).

The checklist is based on the ADA Accessibility Guidelines (ADAAG) but it is not designed for a comprehensive evaluation of compliance with ADAAG's complete scoping and technical requirements. New construction and alterations must be in full compliance with the applicable standards in ADAAG or UFAS (see page 22); however, Title II does not require that existing facilities be retrofitted for full compliance. It does require that programs, when viewed in their entirety, be readily accessible to and usable by people with disabilities.

The level of accessibility required by Title II is determined by applying the program accessibility standard discussed in Chapter 3 to the facilities of the entity as a whole. The ADA coordinator and compliance team will be responsible for making this analysis.

See next page for instructions on how to use the checklist.

Title II entity _____ Program _____

Facility name _____

Worksheet completed by _____ Telephone _____ Date _____

HOW TO USE THE CHECKLIST

1. Establish a time frame for completing the survey.
2. The ADA coordinator and compliance team should designate the person or persons responsible for surveying facilities. It is strongly recommended, particularly for large facilities, that you invite two or three additional people, including people with various disabilities, to assist in identifying barriers, developing solutions for removing these barriers, and setting priorities for implementing improvements.
3. Duplicate the checklist. The person(s) conducting the survey for each building will need to briefly review the facility or floor plans to determine which sections of the checklist and how many copies of each will be needed to survey the whole facility.
4. It is very helpful to have the building floor plans while planning and conducting the survey. During the survey, if plans are not available, use graph paper to sketch the layout of all interior and exterior spaces used by the program. Make notes on the sketch or plan while you are surveying.
5. Conduct the survey. Bring copies of this checklist, a clipboard, a pencil or pen, and a flexible steel tape measure. With three people surveying, one person numbers key items on the floor plan to match with the field notes, taken by a second person, while the third takes measurements. Think about each space from the perspective of people with physical, hearing, visual, and cognitive disabilities, noting areas that need improvement.

When completed, the data collected will be summarized on Worksheet 7, either by the person who conducted the survey or by another designated person.

Accessible Approach/Entrance

People with disabilities should be able to arrive on the site, approach the building, and enter as freely as everyone else. At least one route of travel should be safe and accessible for everyone, including people with disabilities.

Route of Travel (ADAAG 4.3, 4.4, 4.5, 4.7)

Is there a route of travel that does not require the use of stairs?

Yes No


☐ ☐


- ☐ Add a ramp if the route of travel is interrupted by stairs.
- ☐ Add an alternative route on level ground.

Is the route of travel stable, firm and slip-resistant?


☐ ☐


- ☐ Repair uneven paving.
- ☐ Fill small bumps and breaks with beveled patches.
- ☐ Replace gravel with hard top.

 Is the route at least 36 inches wide?

☐ ☐

width

- ☐ Change or move landscaping, furnishings, or other features that narrow the route of travel.
- ☐ Widen route.

 Can all objects protruding into the circulation paths be detected by a person with a visual disability using a cane?

☐ ☐

distance from wall/
height

- ☐ Move or remove protruding objects.
- ☐ Add a cane-detectable base that extends to the ground.
- ☐ Place a cane-detectable object on the ground underneath as a warning barrier.


In order to be detected using a cane, an object must be within 27 inches of the ground. Objects hanging or mounted overhead must be higher than 80 inches to provide clear head room. It is not necessary to remove objects that protrude less than 4 inches from the wall.


Do curbs on the route have curb cuts at drives, parking, and drop-offs?

☐ ☐

- ☐ Install curb cut.
- ☐ Add small ramp up to curb.

Ramps (ADAAG 4.8)

 Are the slopes of ramps no greater than 1:12?

☐ ☐

slope

Slope is given as a ratio of the height to the length. 1:12 means for every 12 inches along the base of the ramp, the height increases one inch. For a 1:12 maximum slope, **at least** one foot of ramp length is needed for each inch of height.

- ☐ Lengthen ramp to decrease slope.
- ☐ Relocate ramp.
- ☐ If available space is limited, reconfigure ramp to include switchbacks.

QUESTIONS

POSSIBLE SOLUTIONS

Ramps, continued

Do all ramps longer than 6 feet have railings on both sides?

Yes No

☐ ☐

☐ Add railings.



Are railings sturdy, and between 34 and 38 inches high?

☐ ☐
☐

height

☐ Adjust height of railing if not between 30 and 38 inches.
☐ Secure handrails in fixtures.



Is the width between railings or curbs at least 36 inches?

☐ ☐
☐

width

☐ Relocate the railings.
☐ Widen the ramp.

Are ramps non-slip?

☐ ☐

☐ Add non-slip surface material.



Is there a 5-foot-long level landing at every 30-foot horizontal length of ramp, at the top and bottom of ramps and at switchbacks?

☐ ☐
☐

length

☐ Remodel or relocate ramp.



Does the ramp rise no more than 30 inches between landings?

☐ ☐
☐

rise

☐ Remodel or relocate ramp.

Parking and Drop-Off Areas (ADAAG 4.6)



Are an adequate number of accessible parking spaces available (8 feet wide for car plus 5-foot access aisle)? For guidance in determining the appropriate number to designate, the table below gives the ADAAG requirements for new construction and alterations (for lots with more than 100 spaces, refer to ADAAG):

☐ ☐
☐

number of accessible spaces

Note widths of existing accessible spaces:

Total spaces	Accessible
1 to 25	1 space
26 to 50	2 spaces
51 to 75	3 spaces
76 to 100	4 spaces

☐ Reconfigure a reasonable number of spaces by repainting stripes.



Are 8-foot-wide spaces, with minimum 8-foot-wide access aisles, and 98 inches of vertical clearance, available for lift-equipped vans?

☐ ☐
☐

width/
vertical clearance

☐ Reconfigure to provide van-accessible space(s).

At least one of every 8 accessible spaces must be van-accessible (with a minimum of one van-accessible space in all cases).

QUESTIONS

POSSIBLE SOLUTIONS

Parking and Drop-Off Areas, continued

Are the access aisles part of the accessible route to the accessible entrance?

Yes No

☐ ☐

Are the accessible spaces closest to the accessible entrance?

☐ ☐

Are accessible spaces marked with the International Symbol of Accessibility? Are there signs reading "Van Accessible" at van spaces?

☐ ☐

Is there an enforcement procedure to ensure that accessible parking is used only by those who need it?

☐ ☐

- ☐ Add curb ramps.
- ☐ Reconstruct sidewalk.

- ☐ Reconfigure spaces.

- ☐ Add signs, placed so that they are not obstructed by cars.

- ☐ Implement a policy to check periodically for violators and report them to the proper authorities.

Entrance (ADAAG 4.13, 4.14, 4.5)

If there are stairs at the main entrance, is there also a ramp or lift, or is there an alternative accessible entrance?

☐ ☐

Do not use a service entrance as the accessible entrance unless there is no other option.

Do all inaccessible entrances have signs indicating the location of the nearest accessible entrance?

☐ ☐


Can the alternate accessible entrance be used independently?


☐ ☐


- ☐ If it is not possible to make the main entrance accessible, create a dignified alternate accessible entrance. If parking is provided, make sure there is accessible parking near all accessible entrances.


- ☐ Install signs before inaccessible entrances so that people do not have to retrace the approach.

- ☐ Eliminate as much as possible the need for assistance—to answer a doorbell, to operate a lift, or to put down a temporary ramp, for example.

 Does the entrance door have at least 32 inches clear opening (for a double door, at least one 32-inch leaf)?

☐ ☐

clear opening

 Is there at least 18 inches of clear wall space on the pull side of the door, next to the handle?

☐ ☐

clear space


A person using a wheelchair or crutches needs this space to get close enough to open the door.

- ☐ Widen the door to 32 inches clear.
- ☐ If technically infeasible, widen to 31-3/8 inches minimum.
- ☐ Install offset (swing-clear) hinges.
- ☐ Remove or relocate furnishings, partitions, or other obstructions.
- ☐ Move door.
- ☐ Add power-assisted or automatic door opener.

QUESTIONS

POSSIBLE SOLUTIONS

Entrance, continued


 Is the threshold edge 1/4-inch high or less, or if beveled edge, no more than 3/4-inch high?

Yes No

☐ ☐

☐

height

 If provided, are carpeting or mats a maximum of 1/2-inch high?


☐ ☐

☐

height

Are edges securely installed to minimize tripping hazards?

☐ ☐


 Is the door handle no higher than 48 inches and operable with a closed fist?

☐ ☐

☐

height

The "closed fist" test for handles and controls: Try opening the door or operating the control using only one hand, held in a fist. If you can do it, so can a person who has limited use of his or her hands.


 Can doors be opened without too much force (exterior doors reserved; maximum is 5 lbf for interior doors)?

☐ ☐

☐

force

You can use an inexpensive force meter or a fish scale to measure the force required to open a door. Attach the hook end to the doorknob or handle. Pull on the ring end until the door opens, and read off the amount of force required. If you do not have a force meter or a fish scale, you will need to judge subjectively whether the door is easy enough to open.

 If the door has a closer, does it take at least 3 seconds to close?

☐ ☐

☐

seconds

- ☐ If there is a single step with a rise of 6 inches or less, add a short ramp.
- ☐ If there is a threshold greater than 3/4-inch high, remove it or modify it to be a ramp.

- ☐ Replace or remove mats.

- ☐ Secure carpeting or mats at edges.

- ☐ Lower handle.
- ☐ Replace inaccessible knob with a lever or loop handle.
- ☐ Retrofit with an add-on lever extension.

- ☐ Adjust the door closers and oil the hinges.
- ☐ Install power-assisted or automatic door openers.
- ☐ Install lighter doors.

- ☐ Adjust door closer.

QUESTIONS

POSSIBLE SOLUTIONS

Access to Programs/Services

Ideally, the layout of the building should allow people with disabilities to reach programs or obtain services without assistance.


Horizontal Circulation (ADAAG 4.3)

Does the accessible entrance provide direct access to the main floor, lobby, or elevator?


Yes No
☐ ☐

Are all public spaces on an accessible route of travel?

☐ ☐

 Is the accessible route to all public spaces at least 36 inches wide?


☐ ☐
☐ width

 Is there a 5-foot circle or a T-shaped space for a person using a wheelchair to reverse direction?


☐ ☐
☐ width

- ☐ Add ramps or lifts.
- ☐ Make another entrance accessible.
- ☐ Provide access to all public spaces along an accessible route of travel.
- ☐ Move furnishings such as tables, chairs, display racks, vending machines, and counters to make more room.
- ☐ Rearrange furnishings, displays, and equipment.


Doors (ADAAG 4.13)

 Do doors into public spaces have at least a 32-inch clear opening?


☐ ☐
☐ clear opening

 On the pull side of doors, next to the handle, is there at least 18 inches of clear wall space so that a person using a wheelchair or crutches can get near to open the door?


☐ ☐
☐ clear space

 Can doors be opened without too much force (5 lbf maximum for interior doors)?

☐ ☐
☐ force

 Are door handles 48 inches high or less and operable with a closed fist?

☐ ☐
☐ height

 Are all threshold edges 1/4-inch high or less, or if beveled edge, no more than 3/4-inch high?

☐ ☐
☐ height

- ☐ Install offset (swing-clear) hinges.
- ☐ Widen doors.
- ☐ Reverse the door swing if it is safe to do so.
- ☐ Move or remove obstructing partitions.
- ☐ Adjust or replace closers.
- ☐ Install lighter doors.
- ☐ Install power-assisted or automatic door openers.
- ☐ Lower handles.
- ☐ Replace inaccessible knobs or latches with lever or loop handles.
- ☐ Retrofit with add-on levers.
- ☐ Install power-assisted or automatic door openers.
- ☐ If there is a threshold greater than 3/4-inch high, remove it or modify it to be a ramp.
- ☐ If between 1/4- and 3/4-inch high, add bevels to both sides.

QUESTIONS

POSSIBLE SOLUTIONS

Yes No

Rooms and Spaces (ADAAG 4.2, 4.4, 4.5)

Are all aisles and pathways to programs and services at least 36 inches wide?

☐ ☐

☐

width

☐ Rearrange furnishings and fixtures to clear aisles.

Is there a 5-foot circle or T-shaped space for turning a wheelchair completely?

☐ ☐

☐

width

☐ Rearrange furnishings to clear more room.

Is carpeting low-pile, tightly woven, and securely attached along edges?

☐ ☐

☐ Secure edges on all sides.
☐ Replace carpeting.

In circulation paths through public areas, are all obstacles cane-detectable (located within 27 inches of the floor or higher than 80 inches, or protruding less than 4 inches from the wall)?

☐ ☐

☐

height/
protrusion

☐ Remove obstacles.
☐ Install furnishings, planters, or other cane-detectable barriers underneath.

Emergency Egress (ADAAG 4.28)

If emergency systems are provided, do they have both flashing lights and audible signals?

☐ ☐

☐ Install visible and audible alarms.
☐ Provide portable devices.

Signage for Programs and Services (ADAAG 4.30)

Different requirements apply to different types of signs.

If provided, do signs and room numbers designating permanent rooms and spaces where programs and services are provided comply with the appropriate requirements for such signage?

☐ ☐

☐ Provide signs that have raised letters, Grade II Braille, and that meet all other requirements for permanent room or space signage. (See ADAAG 4.1.3(16) and 4.30.)

- Signs mounted with centerline 60 inches from floor.

Y N

☐ ☐

☐

height

- Mounted on wall adjacent to latch side of door, or as close as possible.

☐ ☐

- Raised characters, sized between 5/8 and 2 inches high, with high contrast (for room numbers, rest rooms, exits).

☐ ☐

☐

character
height

- Brailled text of the same information.

☐ ☐

- If pictogram is used, it must be accompanied by raised characters and braille.

☐ ☐

QUESTIONS

POSSIBLE SOLUTIONS

Directional and Informational Signage

The following questions apply to directional and informational signs that apply to programs and services.

Yes No



If mounted above 80 inches, do they have letters at least 3 inches high, with high contrast, and non-glare finish?

☐ ☐
☐ ☐
 letter height

Do directional and informational signs comply with legibility requirements? (Building directories or temporary signs need not comply.)

☐ ☐

- ☐ Review requirements and replace signs as needed, meeting the requirements for character size, contrast, and finish.
- ☐ Review requirements and replace signs as needed.

Controls (ADAAG 4.27)



Are all controls that are available for use by the public (including electrical, mechanical, cabinet, game, and self-service controls) located at an accessible height?

☐ ☐
☐ ☐
 height

Reach ranges: The maximum height for a side reach is 54 inches; for a forward reach, 48 inches. The minimum reachable height is 15 inches for a front approach and 9 inches for a side approach.

Are they operable with a closed fist?

☐ ☐

- ☐ Relocate controls.
- ☐ Replace controls.

Seats, Tables, and Counters (ADAAG 4.2, 4.32, 7.2)



Are the aisles between fixed seating (other than assembly area seating) at least 36 inches wide?

☐ ☐
☐ ☐
 width

Are the spaces for wheelchair seating distributed throughout?

☐ ☐

- ☐ Rearrange chairs or tables to provide 36-inch aisles.
- ☐ Rearrange tables to allow room for wheelchairs in seating areas throughout the area.
- ☐ Remove some fixed seating.
- ☐ Lower part or all of high surface.
- ☐ Provide auxiliary table or counter.



Are the tops of tables or counters between 28 and 34 inches high?

☐ ☐
☐ ☐
 height



Are knee spaces at accessible tables at least 27 inches high, 30 inches wide, and 19 inches deep?


☐ ☐
☐ ☐
 height/
width/
depth

- ☐ Replace or raise tables.

QUESTIONS

POSSIBLE SOLUTIONS


Seats, Tables, and Counters, continued

 At each type of cashier counter, is there a portion of the main counter that is no more than 36 inches high?

Yes No

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	
height	

- ☐ Provide a lower auxiliary counter or folding shelf.
- ☐ Arrange the counter and surrounding furnishings to create a space to hand items back and forth.

 Is there a portion of food-ordering counters that is no more than 36 inches high, or is there space at the side for passing items to customers who have difficulty reaching over a high counter?

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	
height	

- ☐ Lower section of counter.
- ☐ Arrange the counter and surrounding furnishings to create a space to pass items.

Vertical Circulation (ADAAG 4.1.3(5), 4.3)

Are there ramps, lifts, or elevators to all public levels?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

- ☐ Install ramps or lifts.
- ☐ Modify a service elevator.
- ☐ Relocate goods or services to an accessible area.

On each level, if there are stairs between the entrance and/or elevator and essential public areas, is there an accessible alternate route?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

- ☐ Post clear signs directing people along an accessible route to ramps, lifts, or elevators.

Stairs (ADAAG 4.9)

The following questions apply to stairs connecting levels *not* serviced by an elevator, ramp, or lift.

Do treads have a non-slip surface?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Do stairs have continuous rails on both sides, with extensions beyond the top and bottom stairs?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------


- ☐ Add non-slip surface to treads.
- ☐ Add or replace handrails if possible within existing floor plan.

Elevators (ADAAG 4.10)

Are there both visible and verbal or audible door opening/closing and floor indicators (one tone = up, two tones = down)?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

- ☐ Install visible and verbal or audible signals.

 Are the call buttons in the hallway no higher than 42 inches?

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	
height	

- ☐ Lower call buttons.
- ☐ Provide a permanently attached reach stick.

Do the controls inside the cab have raised and braille lettering?

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

- ☐ Install raised lettering and braille next to buttons.

QUESTIONS

POSSIBLE SOLUTIONS

Elevators, continued

Is there a sign on both door jambs at every floor identifying the floor in raised and braille letters?

Yes No

☐ ☐

If an emergency intercom is provided, is it usable without voice communication?

☐ ☐


Is the emergency intercom identified by braille and raised letters?


☐ ☐


Lifts (ADAAG 4.2, 4.11)


Can the lift be used without assistance? If not, is a call button provided?

☐ ☐

 Is there at least 30 by 48 inches of clear space for a person in a wheelchair to approach to reach the controls and use the lift?

☐ ☐

 clear space

 Are controls between 15 and 48 inches high (up to 54 inches if a side approach is possible)?

☐ ☐

 height

- ☐ Install tactile signs to identify floor numbers, at a height of 60 inches from floor.
- ☐ Modify communication system.
- ☐ Add tactile identification.
- ☐ At each stopping level, post clear instructions for use of the lift.
- ☐ Provide a call button.
- ☐ Rearrange furnishings and equipment to clear more space.
- ☐ Move controls.

Usability of Rest Rooms

When rest rooms are open to the public, they should be accessible to people with disabilities.

Getting to the Rest Rooms (ADAAG 4.1)

If rest rooms are available to the public, is at least one rest room (either one for each sex, or unisex) fully accessible?

☐ ☐

Are there signs at inaccessible rest rooms that give directions to accessible ones?

☐ ☐

- ☐ Reconfigure rest room.
- ☐ Combine rest rooms to create one unisex accessible rest room.
- ☐ Install accessible signs.

Doorways and Passages (ADAAG 4.2, 4.13, 4.30)

Is there tactile signage identifying rest rooms?

☐ ☐

Mount signs on the wall, on the latch side of the door, complying with the requirements for permanent signage.

- ☐ Add accessible signage, placed to the side of the door, 60 inches to centerline (not on the door itself).

QUESTIONS

POSSIBLE SOLUTIONS


Doorways and Passages, continued

Are pictograms or symbols used to identify rest rooms, and, if used, are raised characters and braille included below them?

Yes No


☐ ☐

- ☐ If symbols are used, add supplementary verbal signage with raised characters and braille below pictogram symbol.

 Is the doorway at least 32 inches clear?


☐ ☐
☐
clear width

- ☐ Install offset (swing-clear) hinges.
- ☐ Widen the doorway.

 Are doors equipped with accessible handles (operable with a closed fist), 48 inches high or less?


☐ ☐
☐
height

- ☐ Lower handles.
- ☐ Replace knobs or latches with lever or loop handles.
- ☐ Add lever extensions.
- ☐ Install power-assisted or automatic door openers.

 Can doors be opened easily (5 lbf maximum force)?

☐ ☐
☐
force


- ☐ Adjust or replace closers.
- ☐ Install lighter doors.
- ☐ Install power-assisted or automatic door openers.

 Does the entry configuration provide adequate maneuvering space for a person using a wheelchair?

☐ ☐
☐
clear width

- ☐ Rearrange furnishings such as chairs and trash cans.
- ☐ Remove inner door if there is a vestibule with two doors.
- ☐ Move or remove obstructing partitions.

A person in a wheelchair needs 36 inches of clear width for forward movement, and a 5-foot diameter or T-shaped clear space to make turns. A minimum distance of 48 inches clear of the door swing is needed between the two doors of an entry vestibule.

 Is there a 36-inch-wide path to all fixtures?

☐ ☐
☐
width


- ☐ Remove obstructions.

Stalls (ADAAG 4.17)

Is the stall door operable with a closed fist, inside and out?

☐ ☐

- ☐ Replace inaccessible knobs with lever or loop handles.
- ☐ Add lever extensions.

 Is there a wheelchair-accessible stall that has an area of at least 5 feet by 5 feet, clear of the door swing, OR is there a stall that is less accessible but that provides greater access than a typical stall (either 36 by 69 inches or 48 by 69 inches)?

☐ ☐
☐
length/
width

- ☐ Move or remove partitions.
- ☐ Reverse the door swing if it is safe to do so.

QUESTIONS

POSSIBLE SOLUTIONS


Stalls, continued

In the accessible stall, are there grab bars behind and on the side wall nearest to the toilet?

Yes No

☐ ☐

☐ Add grab bars.


 Is the toilet seat 17 to 19 inches high?

☐ ☐

☐ Add raised seat.

height

Lavatories (ADAAG 4.19, 4.24)


 Does one lavatory have a 30-inch-wide by 48-inch-deep clear space in front?

☐ ☐

- ☐ Rearrange furnishings.
- ☐ Replace lavatory.
- ☐ Remove or alter cabinetry to provide space underneath.
- ☐ Make sure hot pipes are covered.
- ☐ Move a partition or wall.

A maximum of 19 inches of the required depth may be under the lavatory.


clear space

 Is the lavatory rim no higher than 34 inches?

☐ ☐

☐ Adjust or replace lavatory.

height

 Is there at least 29 inches from the floor to the bottom of the lavatory apron (excluding pipes)?

☐ ☐

☐ Adjust or replace lavatory.

height

Can the faucet be operated with one closed fist?


☐ ☐

☐ Replace with paddle handles.

Are soap and other dispensers and hand dryers within reach ranges (see page 7) and usable with one closed fist?

☐ ☐

- ☐ Lower dispensers.
- ☐ Replace with or provide additional accessible dispensers.

 Is the mirror mounted with the bottom edge of the reflecting surface 40 inches high or lower?


☐ ☐

- ☐ Lower or tilt down the mirror.
- ☐ Add a larger mirror anywhere in the room.

height

Additional Access

When amenities such as drinking fountains and public telephones are provided, they should also be accessible to people with disabilities. When aural/oral communication is necessary for program access, the needs of deaf and hard of hearing individuals must be addressed.

 **Drinking Fountains (ADAAG 4.15)**
Is there at least one fountain with clear floor space of at least 30 by 48 inches in front?

☐ ☐


☐ Clear more room by rearranging or removing furnishings.

clear space

QUESTIONS

POSSIBLE SOLUTIONS

Drinking Fountains, continued

 Is there one fountain with its spout no higher than 36 inches from the ground, and another with a standard height spout (or a single "hi-lo" fountain)?

Yes No


☐ ☐

☐

height

Are controls mounted on the front or on the side near the front edge, and operable with one closed fist?

☐ ☐

 Is each water fountain cane-detectable (located within 27 inches of the floor or protruding into the circulation space less than 4 inches from the wall)?

☐ ☐

☐


height/
protrusion

- ☐ Provide cup dispensers for fountains with spouts that are too high.
- ☐ Provide accessible cooler.

- ☐ Replace the controls.

- ☐ Place a planter or other cane-detectable barrier on each side at floor level.


Telephones (ADAAG 4.31)

 If pay or public use phones are provided, is there clear floor space of at least 30 by 48 inches in front of at least one?

☐ ☐

☐


clear space

 Is the highest operable part of the phone no higher than 48 inches (up to 54 inches if a side approach is possible)?

☐ ☐

☐

height

 Does the phone protrude no more than 4 inches into the circulation space?

☐ ☐

☐

protrusion

- ☐ Move furnishings.
- ☐ Replace booth with open station.

- ☐ Lower telephone.

- ☐ Place a cane-detectable barrier on each side at floor level.

Does the phone have push-button controls?

☐ ☐

- ☐ Contact phone company to install push-buttons.

Is the phone hearing-aid compatible?

☐ ☐

- ☐ Have phone replaced with a hearing-aid compatible one.

Is the phone adapted with volume control?

☐ ☐

- ☐ Have volume control added.

Is the phone with volume control identified with appropriate signage?

☐ ☐

- ☐ Add signage.

If there are four or more public phones in the building, is one of the phones equipped with a text telephone (TT or TDD)?

☐ ☐

- ☐ Install a text telephone.
- ☐ Have a portable TT available.
- ☐ Provide a shelf and outlet next to phone.

Is the location of the text telephone identified by accessible signage bearing the International TDD Symbol?

☐ ☐

- ☐ Add signage.

QUESTIONS

POSSIBLE SOLUTIONS

Assistive Listening Systems (ADAAG

4.1.3, 4.33.7)

In assembly areas where audible communications are integral to the use of the space, are assistive listening systems provided?

☐ ☐

- ☐ Provide assistive listening systems, such as audio loops, infrared, or FM systems

SUMMARY OF INACCESSIBLE FEATURES

7

This worksheet is used to summarize information on barriers identified in the survey of each facility and to analyze impact on the accessibility and usability of the facility.

Any architectural element that varies from ADAAG or UFAS standards should be listed in the second column, headed "Description of Barriers."

In order to evaluate how substantial a barrier is, compare the existing condition to the ADAAG or UFAS requirement. The actual dimensions of measured elements should be entered in the third column and the ADAAG or UFAS requirement in the fourth.

In column five indicate the impact of the barrier on accessibility and usability of programs provided in the facility using the following scale:

1. safety hazard
2. major barrier
3. moderate barrier
4. negligible impact

It is easier to identify safety hazards, such as an object protruding into the path of travel, or major barriers, such as the lack of an accessible entrance, than it is to decide what level of impact a barrier has. People with disabilities bring a user perspective which is essential to this analysis. If people with disabilities were involved in the original survey, they can participate in scoring items on the four-point scale and in developing brief descriptions of the functional impact of barriers.

In circumstances where a user evaluation or other information is not complete, it may be useful to re-survey targeted problem areas.

Descriptions of the functional impact of barriers and potential structural and nonstructural solutions should be entered in column six, "Notes."

The worksheet should be filled out initially by those who completed the survey. The ADA coordinator and compliance team, after review and additional site inspection, may add or revise the notes and the impact scores.

Worksheet

7

SUMMARY OF INACCESSIBLE FEATURES

Facility name _____ Address or location _____

Worksheet completed by _____ Telephone _____ Date _____

CODE
 1 = safety hazard
 2 = major barrier
 3 = moderate barrier
 4 = negligible impact

Possible survey elements (listed as reminders only)	Description of barriers	Actual dimension (if applicable)	ADAAG or UFAS requirement	Impact on program accessibility (use code above)	Notes
ACCESSIBLE ENTRANCE INTO FACILITY Path of travel Ramps Parking and drop-off areas Entrance Emergency egress Signage Other					
ACCESS TO PROGRAMS Horizontal circulation Doors Rooms and spaces Controls Seats, tables, and counters Vertical circulation Stairs Elevators Lifts Signage Other					
ACCESS TO REST ROOMS Getting to the rest rooms Doorways and passages Stalls Lavatories Signage Other					
OTHER ELEMENTS Drinking Fountains Telephones Alarms Other					

7 SUMMARY OF INACCESSIBLE FEATURES

Page ___ of ___ Sign-off: ADA Coordinator

PROGRAM ACCESS OPTIONS

8

This worksheet relates to the information summarized in Worksheet 7, shifting the focus to the program level. The purpose of this worksheet is to determine which barriers can be removed by nonstructural methods and which barriers must be removed through architectural modifications. It will be especially helpful for programs situated on a “campus.”

This worksheet organizes the barrier information by program, displaying all of the facilities where the program is provided. Through this analysis, the compliance team can make decisions about specific facilities where barriers must be addressed in order to provide access to the program. (The issue of program accessibility is addressed in Chapter 3.)

Use one or more worksheets for each program. The number needed will vary widely, depending on the number of facilities and barriers. In column one, list each facility where the program takes place. In column two, briefly list only those barriers that have been determined to be significant. (In Worksheet 7, barriers were rated either 1, 2, 3, or 4. You will probably want to omit barriers rated 4, “negligible impact.”)

In column three, next to each barrier, record the decision of the compliance team on whether the best barrier removal solution is structural (“S”) or nonstructural (“NS”). Nonstructural solutions include relocating to another location, bringing the program to the individual, providing adaptive equipment, and providing additional staff.

In column four, detail the processes or procedures for the nonstructural solutions to each barrier, and in column five, specify the date when these will be accomplished. If it is not possible to find an administrative, nonstructural solution for a particular barrier, that barrier should be considered on Worksheet 9, as part of the transition planning.

This worksheet should be completed by the ADA coordinator, in cooperation with the compliance team. A draft should be reviewed by individuals from the disability community. This can take place through a public meeting or an advisory group meeting. Any changes should then be made and the final, completed worksheet filed as part of the transition plan.

Title II entity _____ Department or sub-unit _____

Program name _____

Worksheet completed by _____ Telephone _____ Date _____

NOTE: Nonstructural changes where to have been completed by January 26, 1993; structural changes by January 26, 1995.

Location(s) where program occurs	List significant barriers (from Worksheet 7)	Access options S=structural NS=nonstructural	Detail nonstructural solutions (Use Worksheet 9 for structural solutions)	Schedule of nonstructural changes

SUMMARY OF ARCHITECTURAL MODIFICATIONS

9

Complete a copy of the first section of this worksheet for each facility, listing all barriers to be removed, descriptions of modifications, cost estimates, and anticipated completion dates.

If applicable, the second section of the worksheet is used to list the locations of curb cuts and curb ramps needed to provide access to the sidewalks and pedestrian ways controlled by the entity. A single unit cost can be estimated unless there are unusual site conditions requiring extensive ramping. An estimated completion date for each curb ramp and curb cut should also be entered.

It is useful to attach a map of the streets and walkways to the worksheet. The worksheet can then list numbers corresponding to numbered locations on the map.

In the third section, identify any barriers that will not be removed (a) by January 26, 1995 (the final date for completion of modifications included in the transition plan), or (b) ever, because to do so would impose undue financial or administrative burdens, and describe the budgetary constraints or other factors that support the undue burden claim. For those that will not be removed, describe any steps that will be undertaken that do not impose undue burdens. The undue burden determination must be made by an official with budgetary authority.

The finished worksheet provides the basis for the draft transition plan. The proposed plan should be made available to the public for comment. Though not required, a public meeting is an effective way of providing people with disabilities, representative organizations, and other concerned parties an opportunity to comment on and discuss the transition plan. An actively involved advisory group comprised of individuals with disabilities is another way to get participation in the development of the transition plan.

To complete the transition plan, revise the draft as necessary in response to comments, attach a copy of Worksheets 8 and 9 and any other supporting documentation as appendices, secure approval as necessary within the entity, and have the official responsible for implementation sign the final transition plan.

Title II entity	Total number of facilities

Worksheet completed by _____ Telephone _____ Date _____

[illegible]

CURB CUTS AND CURB RAMPS

Title II entity _____ Total number of curb cuts/ramps _____

This page completed by _____ Telephone _____ Date _____

Location of curb cuts and curb ramps (or map code number)	Cost estimate	IMPLEMENTATION SCHEDULE			
		1996	1997	1998	1999
TOTAL					

UNDUE BURDEN

Title II entity _____ Total number of facilities _____

This page completed by _____ Telephone _____ Date _____

A) MODIFICATIONS TO BE COMPLETED AFTER JANUARY 26, 1995 (use additional sheets if needed)

Facility	Description of Structural Changes	Cost estimate	Reason for delay and anticipated completion date

B) MODIFICATIONS NOT TO BE IMPLEMENTED (use additional sheets if needed)

Facility	Description of Structural Changes	Cost estimate	Explanation of undue burdens and steps to be taken in lieu of barrier removal

Resources

The following is a list of selected sources available to help state and local governments understand and respond to Title II of the ADA. Many of the listed organizations and agencies produce or distribute publications relating to the ADA; most of these materials are available in accessible formats upon request.

DISABILITY AND BUSINESS TECHNICAL ASSISTANCE CENTERS

The National Institute on Disability and Rehabilitation Research (NIDRR) has funded a network of ten regional Disability and Business Technical Assistance Centers (DBTACs). These centers provide information, training, technical assistance and materials to businesses and agencies covered by the ADA and to people with disabilities who have rights under the ADA.

The ADA Technical Assistance Coordinator (TAC) maintains a worldwide web site on the Internet that links to many of the following centers and other ADA resources. The address is: <http://www.icdi.wvu.edu/tech/ada.htm>.

Following is a list of the ten technical assistance centers. You can contact any center by calling the telephone number listed, or call 1-800-949-4ADA (949-4232) voice/TDD to be automatically connected to the center in your region.

The best way to contact any center is to call the 800 number.

Region I: New England DBTAC (*Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont*)
374 Congress Street, Suite 301
Boston, MA 02210
(617) 695-1225 voice/TDD
(617) 482-8099 fax

Region II: Northeast DBTAC
(*New Jersey, New York, Puerto Rico, Virgin Islands*)
354 South Broad Street
Trenton, NJ 08608
(609) 392-4004 voice
(609) 392-7044 TDD
(609) 392-3505 fax

Region III: Mid-Atlantic DBTAC

(District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, West Virginia)

451 Hungerford Drive, Suite 607

Rockville, MD 20850

(301) 217-0124 voice/TTD

(301) 217-0754 fax

Region IV: Southeast DBTAC

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

1776 Peachtree Street, Suite 208 North

Atlanta, GA 30309-2351

(404) 888-0022 voice/TDD

(404) 888-9091 fax

Region V: Great Lakes DBTAC

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

1640 West Roosevelt Road

Chicago, IL 60608

(312) 413-1407 voice/TDD

(312) 413-1856 fax

Region VI: Southwest DBTAC

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

2323 South Shepherd Blvd., Suite 1000

Houston, TX 77019

(713) 520-0232 voice

(713) 520-5136 TDD

(713) 520-5785 fax

Region VII: Great Plains DBTAC

(Iowa, Kansas, Nebraska, Missouri)

4816 Santana Circle

Columbia, MO 65203

(573) 882-3600 voice/TDD

(573) 884-4925 fax

Region VIII: Rocky Mountain DBTAC

(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

3630 Sinton Road, Suite 103

Colorado Springs, CO 80907-5072

(719) 444-0268 voice/TDD

(719) 444-0269 fax

Region IX: Pacific DBTAC

(Arizona, California, Hawaii, Nevada, Pacific Basin)

2168 Shattuck Avenue, Suite 301

Berkeley, CA 94704

(510) 848-2980 voice

(510) 848-1840 TTD

(510) 848-1981 fax

Region X: Northwest DBTAC

(Alaska, Idaho, Oregon, Washington)

P.O. Box 9046, MS 6000

Olympia, WA 98507-9046

(360) 438-4116 voice

(360) 438-3208 fax

PUBLICATIONS AVAILABLE FROM OR THROUGH THE DBTACs

NIDRR funded three projects to develop materials to help people understand and comply with the ADA. These publications and/or order forms are distributed through the DBTACs. Call (800) 949-4232 for a list of these and other approved materials.

Barrier Free Environments/Adaptive Environments publications on Titles II and III of the ADA:

1. *The ADA Title III Fact Sheet Series*
2. *Checklist for Existing Facilities version 2.1: The Americans with Disabilities Act Survey for Readily Achievable Barrier Removal*
3. *Title II Action Guide for State and Local Governments*
4. *Title II Action Guide Employment Supplement*
5. *ADA Alterations Tech Sheets*
6. *Work in Progress* (video)
7. *ADA Highlights: Standards for Accessible Design* (slide show)

Publications on the Title I (employment) provisions of the ADA are produced by the **Cornell School of Industrial and Labor Relations**. Materials include a series of 21 brochures, a manual on reasonable accommodation in the workplace, and train-the-trainer packages on effective negotiation skills and reasonable accommodation. Contact your regional center for complete information.

Publications, videos, and trainers' guides on employment were also produced by the International Association of Machinists and Aerospace Workers, Center for Administering Rehabilitation and Employment Services (**IAM CARES**). Topics include: interviewing, job descriptions, reasonable accommodation, assistive

technology, and union issues.

Some of the above materials are available commercially from LRP Publications, 747 Dresher Road, P.O. Box 980, Horsham, PA 19044-0980 (800-341-7874 x347).

The ADA Core Curriculum, Presentation Materials for the ADA Technical Assistance Network, is a complete training system, self-contained in one organized, easy-to-use box. The box contains a comprehensive, authoritative set of presentation materials covering every title of the Americans with Disabilities Act. This is the recommended training package that is now in use by the federally funded ADA Disability and Business Technical Assistance Centers across the country. The Core Curriculum has been reviewed by the U.S. Department of Justice. It is available from Adaptive Environments by calling (617) 695-1225 or writing to 374 Congress Street, Suite 301, Boston, MA 02210.

ADA Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools Developed by the U.S. Department of Education, the Guide reflects the interpretations of the Department's Office for Civil Rights, to which the U.S. Department of Justice has delegated responsibility for ensuring that public school systems are in compliance with Title II of the ADA. It is intended to assist school districts in conducting their self-evaluations; worksheets are included. Each school district can get one free copy by contacting the regional ADA Disability and Business Technical Assistance Center (800-949-4232). The Guide is available for \$21 shipping included from the U.S. Government Printing Office, Washington, D.C. 20402, 202-512-1800 voice (stock # 065-000-00774-6).

TRAINING AND TECHNICAL ASSISTANCE

NIDRR has funded six national projects to enhance the capacity of people with disabilities and their families, advocates, and organizations to facilitate implementation of the ADA.

ADA National Access for Public Schools Project

Adaptive Environments Center
374 Congress Street, Suite 301
Boston, MA 02210
(800) 893-1225 voice/TDD

The Schools Project provides up-to-date information on ADA requirements, conducts trainings on how to conduct the self-evalua-

tion, and helps increase the capacity of states to conduct their own training by training regional ADA/Schools trainers.

National Hispanic Outreach Training Project

League of United Latin American Citizens (LULAC)

4001 Durazno

El Paso, TX 79905

(915) 532-3415 voice/TDD

The National Hispanic Outreach Training Project is a program of LULAC and Independent Living Research Utilization (ILRU) to conduct an innovative training and technical assistance project to increase understanding of the ADA among Hispanic people whose proficiency in English is limited.

Project IMPLEMENT

United Cerebral Palsy Associations, Inc.

1660 L Street, NW

Washington, DC 20036

(800) 872-5827 voice/TDD

United Cerebral Palsy is collaborating with thirteen other national disability organizations to train persons with disabilities, as well as family members, friends, and associates on the provisions of the Americans with Disabilities Act and on methods to facilitate ADA implementation in their communities.

ADA Training for Independent Living Centers Project

National Council on Independent Living

2111 Wilson Boulevard, Suite 405

Arlington, VA 22201

(703) 525-3406 voice

(703) 525-3407 TDD

The ADA Training for Independent Living Centers Project identifies ILs that have not had the opportunity to have staff participate in comprehensive ADA training, and provides basic and advanced ADA training and technical assistance on a national basis to staff, volunteers, and associates of ILCs.

ADA Training Project for State and Local Governments

National League of Cities

Center for Education and Information Resources

1301 Pennsylvania Avenue, NW, Fifth floor

Washington, DC 20004

(202) 626-3126 voice

(202) 626-3045 TDD

The ADA Training Project for State and Local Governments

provides training for public policymakers and coordinators involved with the ADA. The project helps to ensure greater voluntary compliance with the ADA among state and local government officials by giving them the information and skills they need to implement the ADA throughout their organizations.

Center for Universal Design

North Carolina State University

Box 8613

Raleigh, NC 27695-8613

(919) 515-3082 voice/TDD

The Center is developing a series of videotapes on ADA Standards for Accessible Design. These videos will illustrate how persons with disabilities use the build environment, explain how the discrete provisions of the Standards mesh to ensure accessibility, and use innovative video techniques. The Center will also develop complementary training materials.

Other national technical assistance projects include:**AbleData**

National Rehabilitation Information Center

8455 Colesville Road, Suite 935

Silver Spring, MD 20910

(800) 346-2742 voice/TDD

Database funded by NIDRR with over 17,000 listings of adaptive equipment for people with all types of disabilities. Assists with finding technological solutions for specific functional limitations.

President's Committee on Employment of People with Disabilities

1331 F Street, NW, Suite 300

Washington, DC 20004-1107

(202) 376-6200 voice

(202) 376-6205 TDD

Works to build a climate of acceptance of people with disabilities in the work force. Produces technical assistance materials. Information on job accommodation, assistive technology, tax incentives, and other topics available. Call for list of publications.

Job Accommodation Network (JAN)

West Virginia University

918 Chestnut Ridge Road

Morgantown, WV 26506

(800) ADA-WORK (232-9675) voice/TDD

(800) 526-7234 voice/TDD

(304) 293-7186 voice/TDD

A service of the President's Committee on Employment of People with Disabilities, JAN is an international information and consulting resource for employers and job applicants. Helps solve specific job accommodation problems through their toll-free hotline.

RESNA Technical Assistance Project

1700 North Moore Street, Suite 1540

Arlington, VA 22209

(703) 524-6686 voice

(703) 524-6639 TDD

Provides coordination to the national network of projects in each state funded by the Technology Act. Contact them for the project in your state. The "Tech Act" projects are the best source for information on assistive technology.

FEDERAL AGENCIES

The federal agencies listed below are responsible for implementing various facets of the ADA. These resources provide invaluable information through their hotlines and print materials.

Architectural and Transportation Barriers Compliance Board (Access Board)

1331 F Street, NW, Suite 1000

Washington, DC 20004-1111

(800) USA-ABLE (872-2253) voice

(202) 272-5434 voice

(202) 272-5449 TDD

An independent federal architectural agency that developed the ADA Accessibility Guidelines and other architectural accessibility guidelines. Provides technical assistance and information on the architectural requirements of the ADA and other access-related legislation, and architectural, communication and transportation accessibility. Write or call for a complete list of publications.

Department of Justice (DOJ)

Civil Rights Division

Disability Rights Section

P.O. Box 66738

Washington, DC 20035-6738

(800) 514-0301 voice

(800) 514-0383 TDD

<http://www.usdoj.gov/crt/ada/adahom1.htm> Web site
Develops and enforces regulations for the Americans with Disabilities Act. Also coordinates ADA technical assistance programs for participating agencies, publish technical assistance materials including the Technical Assistance Manuals for Titles II and III, and provide grants for technical assistance.

Department of Transportation

400 Seventh Street, SW, Room 10424

Washington, DC 20590

(202) 366-1656 voice

(202) 366-4567 TDD

Developed and enforces the regulations to implement the transportation requirements of the ADA. Contact the Department of Transportation for information on the Title II and Title III requirements for public and specified private transportation. Publishes the *Paratransit Handbook* and *Transportation Implications of the Americans with Disabilities Act*.

Equal Employment Opportunity Commission (EEOC)

1801 L Street, NW

Washington, DC 20507

documents

technical assistance

(800) 669-3362 voice

(800) 669-4000 voice

(800) 800-3302 TDD

(800) 669-6820 TDD

Responsible for developing and enforcing the ADA employment regulations. Investigates charges of employment discrimination and works to resolve problems through conciliation. 800 number provides referrals to regional EEOC offices and information on discrimination laws in English and Spanish. Free publications available, including Technical Assistance Manual on Title I.

The Equal Employment Opportunity Commission and the Department of Justice jointly produced the **Americans with Disabilities Act Handbook**. This comprehensive publication provides background, summary, rule-making history, overview of the regulations, section-by-section analysis of comments and revisions, P.L. 101-336 and annotated regulations of Titles I, II, and III, plus appendices and related federal disability laws. One copy free from EEOC or DOJ or from the Disability and Business Technical Assistance Centers. Multiple copies can be purchased from:

U.S. Government Printing Office

Superintendent of Documents

Mail Stop: SSOP

Washington, DC 20402-9328

(202) 512-1800 voice

(202) 512-1426 TDD

Federal Communications Commission (FCC)

1919 M Street, NW

Washington, DC 20554

(202) 632-7260 voice

(202) 632-6999 TDD

Developed and enforces the regulations to implement the Title IV telecommunications requirements. Provides technical assistance and publications (available in print only) and is developing, with the Access Board, guidelines for implementing the Telecommunications law.

PRIVATE AGENCIES**Adaptive Environments Center**

374 Congress Street, Suite 301

Boston, MA 02210

(617) 695-1225 voice/TDD

(617) 482-8099 fax

adaptive@adaptenv.org e-mail

<http://www.adaptenv.org> Web site

A nonprofit organization that develops national training programs and materials on universal design, home modifications and the Americans with Disabilities Act. Publications list is available.

Barrier Free Environments

P.O. Box 30634

Raleigh, NC 27622

(919) 782-7823 voice/TDD

Provides consulting and design services, produces technical assistance materials, media and accessibility guidelines on the Fair Housing Act and the ADA. Publication list is available.

Council of Better Business Bureaus Foundation

4200 Wilson Boulevard, Suite 800

Arlington, VA 22203-1804

(703) 247-3656 voice

(703) 247-3668 TDD

Provides information and training on Alternative Dispute Resolution and sells ADA Compliance Guides (See page 33 of the *Action Guide*.)

Disability Rights and Education Defense Fund (DREDF)

2212 Sixth Street
Berkeley, CA 94710
(510) 644-2555 voice
(510) 644-2629 TDD

1633 Q Street, NW, Suite 220
Washington, DC 20009
(202) 986-0375 voice/TDD

Toll-free information line: (800) 466-4ADA voice/TDD

Legal resource center played a leading role in the passage of the ADA and provides training, technical assistance, and informed analysis of requirements under disability law. Maintains a toll-free information service for ADA Titles II and III, funded by a grant from the U.S. Department of Justice.

Independent Living Centers (ILCs)

Independent Living Centers are a national network of more than two hundred community-based service and advocacy programs run by people with disabilities. ILCs are often a good source of information and assistance on questions and issues related to the ADA. If you are unable to find an Independent Living Center in your phone book, contact the following for assistance locating one.

- Your state vocational rehabilitation agency
- Independent Living Research Utilization Center
2323 South Shepherd, Suite 1000
Houston, TX 77019
(713) 520-0232 voice
(713) 520-5136 TDD

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Fact Sheet 5: Alternatives for Barrier Removal

Fact Sheet 6: Resources for More Information

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Index

Note: **BOLD** numbers denote pages with definitions. *ITALICS* indicate worksheet pages.

- Access information, 70, 113, 118
- Access solutions, 82–83. *See also* Nonstructural modifications; Structural modifications
- Access standards, 22, 77
- Access symbols, 39
- Accessible formats, 40, 81, 108
- Accommodation. *See* Reasonable accommodation
- Action steps, 2, 37–48
 - summary, 48
- ADAAG (ADA Accessibility Guidelines), **22**, 77
- ADA (Americans with Disabilities Act), 1
- ADA coordinator, 38, 49, 52–54
 - qualifications of, 53–54
- ADA compliance team. *See* Compliance team
- ADA training, 57, 81, 87
- Additional charges, 16, 64, 102
- Administrative burden. *See* Undue burdens
- Administrative methods, 14, 60
- Advisory boards, 61
- Alarms, 67, 112
- Alcoholism, 7, 9
- Alterations to existing facilities, 22–23. *See also* Existing facilities
- Alternative Dispute Resolution, 12, 33
- Alternative formats, 40, 81, 108
- Amplification, 67, 68
- Architectural barriers. *See* Facility accessibility
- Architectural modifications. *See* Transition Plan
- Associational discrimination, 9–10, 62
- Audio tape. *See* Accessible formats
- Auxiliary aids and services, **65–67**, 110, 116–117. *See also* Communication; Structural communication features
 - additional information on, 65
 - and effective communication, 66–67, 80–81
 - examples, 65
 - guidelines for choosing, 65–66
 - review of, 71, 110, 116–117
- Barriers. *See* Communication; Facility accessibility; Program accessibility
- Braille. *See* Accessible formats
- Capital planning, 77, 84
- Captioning. *See* Auxiliary aids and services
- Certification, 14–15, 61, 105
- Charitable organizations, 85–86
- Charges, additional, 16, 64, 102
- Checklist, 77, 123–134
- Cognitive disabilities. *See* Auxiliary aids and services; Communication, review of, visual information
- Collective bargaining agreement, 29
- Commitment from entity leaders, 49, 52
- Communication, 12, 16–19, 64–71, 80–81, 91, 107–119
 - developing communication capacity, 80–81
 - effective, 16–19, 66–67, 110
 - review of, 69–71, 91, 107–119
 - aural/oral information, 70, 109
 - visual information, 70, 108
 - structural features, 67, 84
 - summary and action plan, 91, 115–119
 - Title II requirements, 64–69
- Community Development Block Grants (CDBG), 85
- Complaints. *See* Enforcement; Grievance procedure
- Compliance. *See also* Implementation
 - coordinator (*see* ADA coordinator)
 - flowchart, 51
 - process, 2, 55
 - 5–4–3 approach, 2
 - four principles, 3, 49–50
 - team, 56–57
- Computer diskette. *See* Accessible formats
- Confidentiality, 30
- Conflict with other federal laws, 34
- Contractors, 14, 33, 61, 62–63, 64, 85–86, 104
 - access funding for, 85–86
 - choice of, 14
 - discriminatory contracts, 33
 - ensuring compliance of, 62–63
 - procurement, 14, 61, 104
 - service, 61, 62–63, 85–86, 104
- Coordinated review process, 75–78
- Coordination of compliance activities. *See* ADA coordinator

Coordinator. *See* ADA coordinator

Cost, 80, 82

Covered activities, 5–6, 58, 78

Covered entities, 5, 24

Curb cuts/ramps, 46, 74, 141

Defenses, 33–34

Department of Justice, 11

Department listing, 90, 96–97

Departmental liaisons, 56

Designation of responsible employee, 38

Direct threat to health and safety, 10–11, 32

Disability, 6–9, 24
 exclusions from definition, 9

Disability community, 44, 50, 57, 75, 76, 83

Disparate impact, 34

Disparate treatment, 34

Drug testing, 32

Drug use, 9

Effective communication. 16–19, 66–67, 110

Effective dates, 11, 24, 35, 48

Elevators, 23

Eligibility criteria, 16, 59

Emergency telephone services, 19, 112

Emergency warning systems, 112, 118

Employees, 24, 38

Employment, 12, 24–35, 78–79
 applicable regulations, 35
 covered activities, 78
 covered employers, 24
 effective dates, 24
 reasonable accommodation, 78
 relationship to Section 504, 34
 review of, 79
 specific issues, 30–34
 Title II requirements, 78

Enforcement, 11–12, 33, 41–43

Equal opportunity, 13, 59, 64, 101

Essential functions, 25–26

Evacuation, 112

Existing facilities, 19–22

External relations, 64. *See also* Contractors

Facility accessibility, 10–22, 46–47
 distinction between Title II and Title III
 requirements, 22–23
 review of, 74–75, 121–136

 planning steps, 76–78
 Title II requirements, 71

Facility Checklist, 123–134

Facility Inventory, 121–122

Facility location, 61

Financial burden. *See* Undue burdens

Five action steps, 2, 37–48
 summary, 48

5–4–3 approach to compliance, 2

Flowchart, 51

FM broadcast systems, 67

Food handlers, 32

Foundations, 85–86

Four principles of effective compliance, 3, 49–50

Formats. *See* Accessible formats

Fundamental alteration, 21, 80, 119

Funding, 84–86

General nondiscrimination provisions. *See*
 Nondiscrimination provisions

General policies and practices review. *See* Policies,
 practices, and procedures, review of

Grievance procedure, 11, 41–43
 sample, 42–43

Health. *See* Direct threat to health and safety

Hearing disabilities. *See* Auxiliary aids and services;
 Communication, review of, aural/oral
 information

Historic preservation programs, 21, 83

Identifying departments and programs, 58

Illegal drug use, 9

Impairment. *See* Disability

Implementation, 49–87. *See also* Compliance
 compliance process, 2, 55
 5–4–3 approach, 2
 schedule, 138, 140–141

Inaccessible features, 135–136. *See also* Facility
 accessibility

Infectious and communicable diseases, 32

Institutionalizing compliance, 50, 87–88

Integrated programs, 13–14, 60, 82–83

International Symbol of Accessibility, 39

Interpreters, 17–18, 68–69

Involvement of people with disabilities, 44, 50, 57, 75,
 76, 83

- Job-related standards, **30**
- Land and Water Conservation funds, 85
- Large print. *See* Accessible formats
- Lawsuits, 11
- Leases, 23
- Legal requirements, 12–34
- Liaisons, 56
- Licensing and certification, 14–15, 61, **105**
- List of departments/programs, **90, 96–97**
- Location
 - of facility, 23, 61, 81
 - of program, 81
- Maintenance of accessible features, 23
- Major life activities, **6**
- Medical inquiries, 30–32
- Methods of administration, 14, 60
- Modifying policies and practices, 79–80
- Municipal grievance procedure, sample, 42–43
- New construction, 22–23. *See also* Existing facilities
- Nondiscrimination provisions, 12, 13–16, 59–64
 - review of, 63–64
 - Title II requirements, 59–63
- Nonstructural modifications, 19–20, 81–82, 84. *See also* Structural modifications
- Notice, 39–40
 - sample, 40
- Opinion leaders, 56, 87
- Person with a disability. *See* Disability
- Phases of compliance. *See* Three-phase process
- Physical or mental impairment, **7**. *See also* Disability
- Planning and advisory boards, 61
- Planning for compliance, 52–57
 - preliminary planning, 54–57
- Policies, practices, and procedures
 - implementing modifications, 79–80
 - reasonable modification of, 15–16, 60–61, **102**
 - review of, **44, 63–64, 90, 99–105**
- Post-offer inquiries, 30
- Pre-employment inquiries, 30
- Preferences, 83
- Primary consideration, **65–66, 110, 117**
- Principles of effective compliance, 3, 49–50
- Procurement contracts, 14, 61, **104**. *See also* Contractors
- Program accessibility, 12, 19–23, **71–78, 81–84**
 - creating program and facility access, 81–84
 - example, 71–73
 - in historic facilities, 83
 - limitations on requirement, 82
 - options, **137–138**
 - Title II requirements, 71
- Program listing, **90, 96–97**
- Program operations, 64
- Public accommodations, 22
- Public address systems, 67
- Public employers. *See* Employment
- Public entity, **1, 38**
- Public television, 18
- Public transportation, 5
- Qualification standards, 30
- Qualified individual with a disability, **10, 25**
- Qualified interpreters, **17–18, 68–69**
- Raised letters, 67
- Readily achievable, **22**
- Reasonable accommodation, **26–28, 78**
- Reasonable modification of policies, practices, and procedures, 15–16, 60–61
- Rehabilitation Act of 1973. *See* Section 504 of Rehabilitation Act
- Relay service, 18, 68–69. *See also* TDD
- Remedies, 33
- Requirements, 12–34
- Responsible employee, 38. *See also* ADA coordinator
- Roads, 46
- Safety. *See* Direct threat to health and safety
- Section 504 of Rehabilitation Act, 1–2, 6
 - and employment effective dates, 35
 - and institutionalizing compliance, 50
 - relationship to Title II, 1–2, 34
 - self-evaluation, 45
 - transition plan, 47
- Selection criteria, 30
- Self-evaluation, 44, 58–79. *See also* Worksheets
 - communication, 64–71
 - employment, 78–79
 - general nondiscrimination provisions, 59–64
 - program accessibility, 71–78
 - relationship between ADA and Section 504, 45
 - worksheets, 95–136

- Separate programs, 60, 103
- Service contracts, 61, 62–63, 85–86, 104. *See also*
 - Contractors
- Sign language interpreters, 17–18, 68–69
- Signage, 67, 70, 81
- Solutions, 82–83
- Speech disabilities. *See* Auxiliary aids and services;
 - Communication, review of, aural/oral information
- Staff involvement, 87–88
- State and local funds, 85
- State and local laws, 6, 12
- Statement of commitment, 52
- Structural communication features, 67, 84
- Structural modifications, 19–22, 81–82, 84, 139–140.
 - See also* Nonstructural modifications
 - funding for, 84–86
- Substantial impairment, 6
- Substantially limited in working, 24
- Surcharges, 16, 64, 102
- Survey tool, 77
- Symbols of accessibility, 39

- Tactile signage, 67
- Tax incentives, 86
- TDD (Telecommunication Device for the Deaf), 18,
 - 68–69, 81, 118. *See also* Communication;
 - Telephone communications
 - training, 81, 118
- Telephone communications, 18–19, 70, 111.
 - See also* TDD
 - amplified telephones, 67, 68
 - emergency services, 112
 - relay service, 68–69
- Text telephone. *See* TDD
- Three-phase process, 3, 50–83
 - phase I, 52–57
 - phase II, 58–79
 - phase III, 79–84
- Title I, 24. *See also* Employment
- Title II, 1–2. *See also* Public entity
 - overview of Title II, 5–35
 - overview of requirements, 12–34
 - relationship to Section 504, 34
- Title III, 22
- Training, 57, 81, 87
- Transition plan, 46–47, 84, 119. *See also* Worksheets
 - as a priority-setting device, 47
 - minimum requirements, 84
 - relationship between ADA and Section 504, 47
 - worksheets, 137–142
- Transportation, 5

- U.S. Department of Justice, 11
- Undue burdens, 21, 66, 80, 119, 142
- Undue hardship, 28–29, 34, 78
- UFAS (Uniform Federal Accessibility Standards), 22,
 - 77, 123

- Visual disabilities. *See* Auxiliary aids and services;
 - Communication, review of, visual information

- Walkways, 46, 74
- Worksheets, 64, 70, 77, 78, 81, 89–142
 - overview, 89–94
 - self-evaluation, 95–136
 - communication, 107–119
 - facility access, 121–136
 - policies and practices, 99–105
 - transition plan, 137–142
- Written policies, 69

User Comment Form

Your comments on the usefulness of the *Title II Action Guide* will help us as we prepare updates to this guide. Please fill out this form and return it to:

Elaine Ostroff
Adaptive Environments Center
374 Congress Street, Suite 301
Boston, MA 02210
or fax: (617) 482-8099

1. Are there concepts or implementation processes that you feel should be included in the *Action Guide* that are not in this edition?

2. Which topics covered in the *Action Guide* do you feel would be improved with more examples?

3. Were any topics written in such a way that you found the information difficult to understand?

4. Please rate the usefulness of the worksheets (5=most useful):

Worksheet 1. Department or Program Listing	1	2	3	4	5
Worksheet 2. General Policies and Practices Review	1	2	3	4	5
Worksheet 3. Communication Access Assessment	1	2	3	4	5
Worksheet 4. Communication Summary and Action Plan	1	2	3	4	5
Worksheet 5. Facilities Inventory	1	2	3	4	5
Worksheet 6. Facility Checklist	1	2	3	4	5
Worksheet 7. Summary of Inaccessible Features	1	2	3	4	5
Worksheet 8. Program Access Options	1	2	3	4	5
Worksheet 9. Summary of Architectural Modifications	1	2	3	4	5

5. What did you find most useful about the *Action Guide*?

6. What did you find least useful?

7. How would you improve the *Action Guide*? (Note any additions, changes, or corrections you feel should be made.)

8. How often do you use the *Action Guide* now?

- ☐ At least once a day
- ☐ 4-5 times/week
- ☐ 1-3 times/week
- ☐ 2-3 times/month
- ☐ Once a month or less
- ☐ Not at all

9. How often did you use the *Action Guide* when you first got it?

- ☐ At least once a day
- ☐ 4-5 times/week
- ☐ 1-3 times/week
- ☐ 2-3 times/month
- ☐ Once a month or less
- ☐ Not at all

10. At the time you got the book, where were you in your ADA compliance process? (Check all that apply.)

- ☐ ADA coordinator appointed
- ☐ Notice published
- ☐ Grievance procedure adopted
- ☐ Self-evaluation begun
- ☐ Transition plan begun
- ☐ Disability review process in place

11. How did you obtain the *Action Guide*?

- ☐ Received as part of training
- ☐ Ordered from brochure
- ☐ Other (specify): _____

12. Other comments?

13. Information about your entity will help us understand the effectiveness of our guide in relation to agency type, size, and location. If you prefer to remain anonymous, please use generic descriptors.

Name and title _____

ADA responsibility _____

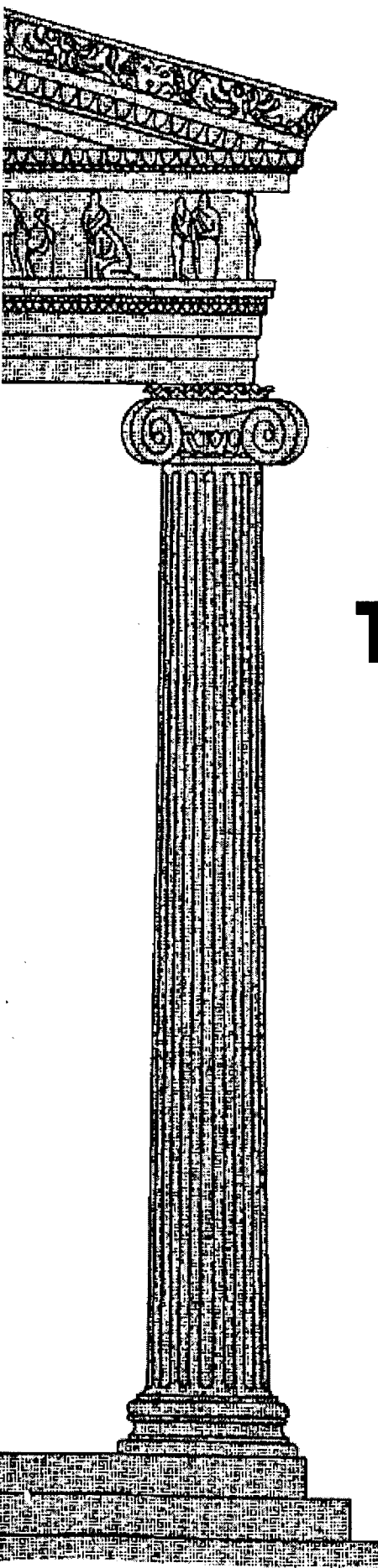
Entity name _____

Address _____

Entity responsibility _____

Number of employees _____ Number of facilities _____

Geographic reach (statewide, citywide, etc.) _____



ADA

TITLE II ACTION GUIDE

For State and Local Governments

and

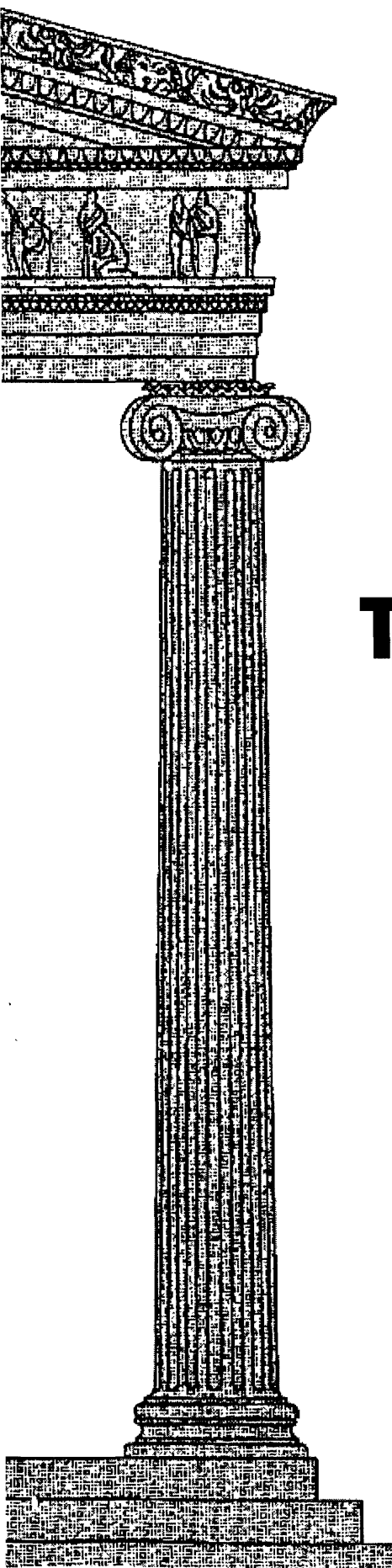
SUPPLEMENT ON EMPLOYMENT

Adaptive Environments Center, Inc.

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Barrier Free Environments, Inc. and Adaptive Environments Center, Inc. are authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to develop materials on the Americans with Disabilities Act. However, you should be aware that NIDRR is not responsible for enforcement of the ADA. The information presented here is intended solely as informal guidance, and is neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.





ADA

TITLE II ACTION GUIDE

For State and Local Governments

SUPPLEMENT ON EMPLOYMENT

Published by Adaptive Environments, 374 Congress Street, Suite 301,
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Table of Contents

PREFACE	S-2
INTRODUCTION	S-3
Employment Issues Update	S-5
Alcohol and Drug Use	S-5
Benefits	S-5
Practical Steps.....	S-6
SELF-EVALUATION WORKSHEETS.....	S-7
Worksheet 1. Getting Started: Identifying the Scope of the Self-Evaluation for Employment	S-9
Worksheet 2. Identifying Steps in the Employment Process - New Hires.....	S-15
Worksheet 3. Identifying Stages in the Employment Relationship - Incumbent Workers	S-23
Worksheet 4. Reasonable Accommodation.....	S-27
Worksheet 5. Essential Job Functions	S-33
APPENDIX: SAMPLE EMPLOYMENT APPLICATION.....	S-37

Preface

This supplement to the *ADA Title II Action Guide for State and Local Governments* presents a practical manual to assist state and local government public entities in implementing the self-evaluation for employment practices requirement of the Americans with Disabilities Act (ADA). The supplement was developed in cooperation with a panel of reviewers nationwide who are deeply involved in the day-to-day activities of ADA implementation.

The supplement is consistent with the practical approach to compliance articulated in the *Action Guide* called the "5-4-3 approach." This approach is a strategy for compliance that breaks the process down into five action steps, articulates four principles that guide successful compliance efforts, and divides compliance activities into three phases. For more on the 5-4-3 approach, see *Action Guide*, Ch. 2-3.

The supplement has been written and produced by Adaptive Environments Center under a subcontract to Barrier Free Environments, Inc., through a grant for ADA materials development from the National Institute on Disability and Rehabilitation Research, grant #H133D10122. The content was reviewed by the U.S. Equal Employment Opportunity Commission (EEOC).

This supplement is available in regular print, audio tape, ASCII diskette, and Braille from Adaptive Environments. Contact your regional Disability and Business Technical Assistance Center to request brochures and order forms.

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Introduction

This manual serves as a supplemental chapter to the *ADA Title II Action Guide for State and Local Governments*. The *Action Guide* provides technical assistance and implementation strategies for state and local government units complying with Title II of the Americans with Disabilities Act (ADA). The *Action Guide* includes a detailed explanation of the employment requirements of Title II in the legal overview chapter (*Action Guide*, pp. 24-35), but does not include a self-evaluation process with respect to employment practices. This supplement fills that gap by providing an employment self-evaluation guide. The supplement contains some new information or further clarification of the legal requirements with respect to some issues (readers should refer back to the *Action Guide* for the complete overview), practical suggestions for coordinating the self-evaluation and a series of worksheets designed to assist public entities in determining whether their employment practices are consistent with the requirements of the ADA. The worksheets provide a vehicle for identifying problem areas and proposed solutions. Completion of the process defined through the worksheets will result in a basis for a completed self-evaluation of employment practices for the public entity involved.

The *Action Guide*, pp. 44-45, contains a detailed discussion of the ADA self-evaluation requirement for public entities. The scope of employment activities covered include the application process, testing, interviewing, hiring, job assignment, evaluation, discipline, medical examinations, compensation, promotion, on-the-job training, layoff/recall, termination, leave and benefits such as health insurance. The worksheets contained in this supplement are designed to evaluate the public entity's compliance with the ADA requirements in each of these employment activity areas. The self-evaluation was required to be completed by January 26, 1993. For entities that have not yet completed the self-evaluation process, this supplement provides a vehicle to do so. For public entities that have completed a self-evaluation, this supplement can be used to review the self-evaluation for completeness and can also be used on an ongoing basis for periodic review of compliance activities,

identifying areas where additional modifications may be necessary. While all entities are required to complete a self-evaluation, only those with 50 or more employees are required to keep this on file for three years.

The five worksheets included in this manual provide a “hands on” mechanism to complete the self-evaluation. The worksheets detail a manageable process in which each aspect of the overall employment experience can be reviewed. The worksheets also clarify and document the decision-making process. This set of worksheets supplement the *Action Guide*, Ch. 3 “Implementation” on p. 79: “Conducting the Employment Review.” The worksheets are:

- Worksheet 1.** Getting Started: Identifying the Scope of the Self-Evaluation for Employment
- Worksheet 2.** Identifying Steps in the Employment Process - New Hires
- Worksheet 3.** Identifying Stages in the Employment Relationship - Incumbent Workers
- Worksheet 4.** Reasonable Accommodation
- Worksheet 5.** Essential Job Functions

The ADA Title II regulations issued by the Department of Justice specifically require that public entities provide opportunities for people with disabilities or organizations representing people with disabilities to participate in the self-evaluation process. Users of this supplement are encouraged to identify such persons or groups at the outset of the self-evaluation process and utilize the experience and insights they may offer as a component of the self-evaluation. The regional Disability and Business Technical Assistance Centers can serve as a key referral source to identify knowledgeable persons with disabilities in the community, many of whom have participated in intensive ADA training conducted by the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice. See *Action Guide*, Resources, pp. 143-146.

Employment Issues Update

ALCOHOL AND DRUG USE

The employment regulations treat alcohol and drug use differently. Alcoholism is recognized as a disability under the ADA, however employers do not have to tolerate poor work performance due to alcoholism. For example, if an employee fails to meet an employer's job performance standards due to alcoholism, the employee can be disciplined, terminated or denied employment to the same extent as non-disabled employees.

The ADA does *not* protect an individual currently engaging in the illegal use of drugs. However, a person with a history of drug addiction who (1) has been successfully rehabilitated or is participating in a drug rehabilitation program and (2) is not engaging in the illegal use of drugs *is* protected if the person is a qualified individual with a disability. An individual who is erroneously regarded as being a drug addict is also protected. (This supplements the *Action Guide*, p. 32.)

BENEFITS

The ADA requires that all workers be provided equal access to benefits, such as health insurance, regardless of disability. However the regulations also indicate that certain restrictions, such as pre-existing condition waiting periods or caps on particular types of services, such as out-patient physical therapy, are permissible unless proven to be a subterfuge for discrimination.

On June 8, 1993 the EEOC issued an Interim Enforcement Guidance document articulating the agency's position on the ADA and disability-based distinctions in employer provided health insurance. Future reports will address other health insurance issues and the application of the ADA to other types of employee benefits such as pension plans, life insurance and disability insurance. The EEOC is also engaged in litigation on the issue of disability-specific limitations on benefits (e.g., excluding or capping expenses arising from HIV or AIDS). This is an area where the scope of regulation is still evolving. For example, until a court decision or final EEOC clarification is issued, it is unclear how far the "equal access to benefits" language extends. Is it sufficient that all employees have access to

apply for benefits, even though some may be rejected on the basis of disability? Is the employer responsible for providing alternative coverage or seeking alternative providers if an employee is rejected? These questions are unresolved at this time.

Practical steps

The starting point for the self-evaluation of employment practices process is to determine who will be the responsible staff person at the public entity to undertake the task. Title II requires that any public entity with 50 or more employees designate a “responsible employee” to coordinate ADA compliance. This position is typically referred to as the ADA coordinator. Many smaller public entities are also identifying an ADA coordinator in order to ensure compliance with the ADA. When an entity has appointed an ADA coordinator, that individual may be the appropriate person to conduct the self-evaluation for employment. Other positions that may assume this responsibility are Director of Personnel, Human Resources Director, Chief of Staff, Legal Counsel or others in an overall supervisory capacity for personnel matters.

Understanding who is involved in the chain of decision-making with respect to all employees is critical as a means of identifying who has a role in the employment process. All staff involved in the process need to be acting in a consistent and coordinated fashion. Review of staff responsibility for employment also enables the entity to identify outside agencies such as recruiters or employment agencies that may participate in the hiring process. Such agencies are also covered by the ADA and the employment practices utilized by those groups must meet ADA compliance criteria. A public entity must ensure that the employment activities of an outside agency meet ADA requirements. Also, job training and apprenticeship programs should be identified and their practices reviewed to ensure that participants are being handled in a nondiscriminatory manner.

Self-Evaluation Worksheets

Worksheets for the self-evaluation are provided beginning on page 9. The worksheets are intended to be used as a “hands on” tool and should be photocopied and duplicated in the necessary quantity to be used by appropriate staff. Cover sheets for each worksheet give an overview of the worksheets with suggestions for their use.

IDENTIFYING THE SCOPE OF THE SELF-EVALUATION FOR EMPLOYMENT

The first worksheet is a vehicle to identify the scope of the self-evaluation for employment. It is used to identify key individuals in the employment process, identify staff who may be involved in the hiring process and document the involvement of people with disabilities.

The worksheet enables the user initially to identify the department within the entity and describe the hiring protocol for each department. This is intended to be a means of insuring that all routes of employment are identified including seasonal workers, workers covered by collective bargaining agreements and workers who may be hired through outside agencies. Identification of employees covered by the ADA also enables a public entity to determine when its responsibility as an employer does not extend to particular individuals. For example, volunteers, interns or student teachers who may be placed at a public entity program are not defined as an employee of the public entity.

An important component of the evaluation process is the identification of unionized workers and the terms of union agreements. The terms of a collective bargaining agreement may include related employment practices such as job restructuring or reassignment requested as a reasonable accommodation. For example, if provision of a job reassignment would violate a seniority provision, the employer must determine whether providing the accommodation will create an undue hardship. The EEOC will determine, on a case-by-case basis, whether the undue hardship defense is valid. Staff responsible for determining the provision of such accommodations need to be aware of the limitations, if any, imposed by union agreements. There may also be provisions in an agreement that are clearly impermissible. For example, a collective bargaining agreement that provides a person only one unpaid leave for treatment of alcoholism, as compared to other employees seeking leaves, singles out individuals with a disability for different treatment. Such a provision violates the ADA. Also, as part of monitoring ongoing ADA compliance, public entities will want to reexamine and possibly renegotiate terms of agreements that impede ADA compliance. A reminder to staff for determining when contracts are up for renewal is key.

Use of terms that expressly violate the ADA, such as in the alcoholism treatment example above, should be immediately suspended.

Individual staff who are involved in the hiring process are then identified in order to create a “chain of command” chart. This makes it possible for the user to identify all participants in the hiring process and determine more accurately who needs to be involved in the self-evaluation. When completing the worksheet, staff should be sure to identify recruiters, training or apprenticeship programs, affiliations with secondary or post-secondary institutions or other avenues for securing employees.

Table 2

For each department listed in Column C of Table 1 complete the following portion of the worksheet:

[illegible]

Chain of Command Chart

Place staff from columns B and C in the list below to determine who needs to be in the self-evaluation.

Final Authority
(Decision-Maker):

Supervisor:

Interviewer #2:

Initial Interviewer
(Administrator of Job Tests):

Recruiter:

Applicants for Hire/Promotion:

Participation of People with Disabilities

Name:

Address:

Date(s):

Role in Self-Evaluation:

Name:

Address:

Date(s):

Role in Self-Evaluation:

Name:

Address:

Date(s):

Role in Self-Evaluation:

Name:

Address:

Date(s):

Role in Self-Evaluation:

NEW HIRES

The non-discrimination requirements contained in the ADA apply to both new hires and incumbent workers. However, because many of the regulations focus on the hiring process, public entities may focus on hiring at the expense of reviewing employment practices for existing employees. Accordingly, the supplement presents two separate worksheets, Worksheet 2 focusing on identifying the steps in the hiring process for new employees and Worksheet 3, identifying stages in the employment relationship for incumbents.

Employers must take steps to comply with ADA requirements beginning with initial recruitment activities and contacts with a job applicant and at every step of the hiring process. Worksheet 2 divides the hiring process into key steps and identifies tasks employers must undertake to be in compliance. This supplements *Action Guide*, at pp. 30-32, "Pre-Employment and Medical Inquiries," "Post-Offer Inquiries and Confidentiality," "Drug Testing," and "Direct Threat to Health and Safety."

The effect of ADA regulations begin when a public entity employer advertises for a position. Entities must ensure that the content of job solicitations, whether internal postings, newspaper advertisements or solicitations through outside recruiters, is nondiscriminatory. For example, a nondiscriminatory advertisement would describe job qualification requirements that are related solely to the functions of the job to be performed.

The content of application forms must be reviewed to ensure that only permissible questions are being asked. The appendix to this supplement contains a sample application form illustrating permissible questions that meet the ADA requirements and impermissible questions that must be eliminated. The format of an application form may also create barriers for persons with certain disabilities. Public entities should anticipate requests for applications in alternate formats such as large print or Braille or be able to provide assistance in completing an application, if requested, to an applicant who has motor, visual or cognitive impairments. The site where applications are received and completed may also present

barriers. Public entities must include areas utilized in the hiring process in their assessment of structural barriers to accessibility. (See Worksheet 6, *Action Guide*.)

Interviews must also meet ADA requirements. Interview sites must be assessed to ensure that they are accessible. If an inaccessible site is identified, steps should be taken either to make it accessible or designate an alternative interview site. See *Action Guide*, pp.19-21 "Access to Existing Facilities," for further discussion of this issue. The content of interviews must be reviewed and, if necessary, standardized to ensure that questions asked of applicants are related to employment ability and employment history. It is highly recommended that all staff who are involved in the interview process undergo ADA and disability awareness training to better prepare them for interviews of candidates with disabilities. Contact your regional Disability and Business Technical Assistance Center for information about upcoming trainings or the availability of materials or videotapes to use in your own trainings.

Job tests are also regulated by the ADA. If the job test screens out, or tends to screen out, individuals based on disability the test must be revised to be solely job-related and consistent with business necessity. See *Action Guide*, p. 30, "Qualification Standards and Selection Criteria." Public entities are encouraged, but not required, to utilize this standard for all testing.

NEW HIRES

Title II entity _____ Program _____

Worksheet completed by _____ Telephone _____ Date _____

Step 1: Advertising

Identify all ways in which job vacancies are advertised.

Internal posting/notice ☐ Yes ☐ NoNewspaper ☐ Yes ☐ NoOutside recruiters or employment agencies ☐ Yes ☐ No

Other: Describe _____

Has content been reviewed to ensure it is nondiscriminatory? ☐ Yes ☐ No

Identify staff person(s) responsible for drafting content of solicitations.

Name and Department:

Review all job advertising. Delete all inappropriate language. Establish guidelines and procedure for content review for all future advertising.

Have locations been reviewed for accessibility (e.g. recruiter's offices, bulletin boards)? Complete a Facility Checklist (*Action Guide*, Worksheet 6 if appropriate).Facility Checklist completed? ☐ Yes ☐ NoBarriers identified? ☐ Yes ☐ NoPlan to remove barriers developed? ☐ Yes ☐ No

Identify alternate accessible site for permanent

use or pending barrier removal, if necessary? ☐ Yes ☐ No

Step 2: Application Form

Identify all materials given to job applicants at the initial interview ("application packet") stage. Forms must not contain questions that identify disability.

Application ☐ Yes ☐ No

Release forms ☐ Yes ☐ No

Other: Describe _____

Review application packet. Delete all inappropriate language or forms.

Is a protocol in place for handling reasonable accommodation requests relating to the application form? ☐ Yes ☐ No

Utilize Worksheet 4 to develop a protocol. Distribute to appropriate staff.

Identify location(s) where applicants complete application forms: _____

Consider whether the site is accessible, including the path of travel to the site from public transportation, parking, entrances, etc. Complete a Facility Checklist (*Action Guide*, Worksheet 6) on the site.

Facility Checklist completed ☐ Yes ☐ No

Barriers identified ☐ Yes ☐ No

Plan to remove barriers developed ☐ Yes ☐ No

Identify alternate accessible site for permanent use or pending barrier removal, if necessary:

Step 3: Interview

Identify location(s) where interviews are conducted: _____

Consider whether the site is accessible, including the path of travel to the site from public transportation, parking, entrance, etc. Complete a Facility Checklist (*Action Guide, Worksheet 6*) on the site.

Facility Checklist completed ☐ Yes ☐ No

Barriers identified ☐ Yes ☐ No

Plan to remove barriers developed ☐ Yes ☐ No

Identify alternate accessible site for permanent use or pending barrier removal, if necessary:

Are interview questions standardized to ensure against inappropriate/illegal questions? ☐ Yes ☐ No

Develop standardized interview questions. Distribute to appropriate staff.

Do interview questions track job functions? (see Worksheet 5) ☐ Yes ☐ No

Utilize Worksheet 5 to correlate interview questions with job functions.

Modify questions as appropriate.

Have staff who conduct interviews received ADA training? ☐ Yes ☐ No

Identify training programs for such staff and schedule.

Is a protocol in place for handling reasonable accommodation requests for the job interview?

(see Worksheet 4) ☐ Yes ☐ No

Utilize Worksheet 4 to develop a protocol. Distribute to appropriate staff.

Step 4: Medical Examination

Identify positions that require a medical examination: _____

Are examinations required of all entering workers in the same job category? ☐ Yes ☐ No

Review medical examination requirement. Modify as necessary.

Identify the timing of any medical testing (excluding drug testing) in the employment process:

Medical testing must occur at the post-offer stage.

Develop timing protocol to ensure medical testing occurs at a uniform, post-offer stage. Distribute to appropriate staff.

Step 5: Health Insurance & Other Benefits

Forms that disclose disability related information should be completed at the post-offer stage.

Identify step during employment process when new hires are asked to complete health, life and/or disability insurance forms: _____

Include timing for distribution of benefits forms in timing protocol developed in Step 4.

Step 6: Personnel Policies Manual

Does the entity have a written personnel policies manual? ☐ Yes ☐ No

If so, utilize the following checklist for content review:

Statement of Nondiscrimination or Equal Opportunity

Benefits

Rules of Conduct/Discipline

Attendance/Sick Leave

Medical Exam Requirements (Return to Work)

Dress Code

Confidentiality

Termination

Use of Drugs/Alcohol

Comments on work to be done or changes necessary: _____

Make changes. Distribute to staff.

Is personnel policy manual available in alternate formats? ☐ Yes ☐ No

Audio cassette? ☐ Yes ☐ No

Braille? ☐ Yes ☐ No

Large print? ☐ Yes ☐ No

Computer diskette? ☐ Yes ☐ No

Develop alternate formats.

Step 7: Job Tests

Identify job tests or skills tests administered to applicants (e.g. typing tests, spelling tests):

_____	_____
_____	_____
_____	_____

Do job tests relate to actual essential job functions performed? ☐ Yes ☐ No

Job category: _____

Job category: _____

(List more as needed) _____

Utilize Worksheet 5 to correlate job tests with job functions. Modify as appropriate.

Is a protocol in place for handling requests for reasonable accommodation in taking job tests? (see

Supplement, Worksheet 4) ☐ Yes ☐ No

Append all documentation relating to action steps to Worksheet 2.

INCUMBENT WORKERS

Worksheet 3 provides a step-by-step process to ensure that public employers have undertaken the necessary compliance activities with respect to incumbent employees.

Employers need to review existing policies and practices to make certain of compliance with the ADA. Employee files need to be reviewed and confidential disability related materials generated on or after July 26, 1992 must be segregated from other employment material. Employers are encouraged but not required to remove medical information obtained prior to July 26, 1992. See *Action Guide*, pp. 31-32, "Pre-Employment and Medical Inquiries." Evaluation forms used to measure job performance need to be reviewed to make sure that they are job related and address essential functions of the job. Policies regulating promotion, compensation, lay-off, absences, dress codes and other aspects of the employment relationship should be reviewed to ensure that barriers are not being unnecessarily erected.

Medical examinations of incumbents are more limited in scope than what is permitted for new hires. Such exams must be job related and focus specifically on the employee's ability to perform the essential functions of the job with or without a reasonable accommodation.

On-site and off-site training programs must be included as a component of the self-evaluation. In addition to site access, access to information must be considered. Training information may require accommodation, such as captioning of training videos or presentation of training manuals or related materials in alternate formats.

Social, recreational, and service activities of the employer must also be included in the self-evaluation. All activities of the employer, including transportation services, day care services, social and recreational activities that are employer sponsored must be nondiscriminatory.

Begin with the "Compliance Goals" column on the left. Answer each compliance question "yes" or "no." If "yes," proceed down the "Compliance Goals" column. If "no," move to the "Action Steps" column on the right to identify steps to take to reach the compliance goal.

INCUMBENT WORKERS

Title II entity _____ Program _____

Worksheet completed by _____ Telephone _____ Date _____

Compliance Goals**Action Steps**

Have personnel files been reviewed to ensure that information identifying disability is contained in a separate file? _____ NO _____

Review all worker files. Segregate health insurance applications or claim forms, fitness for duty reports or other documents that contain disability identifying information. Create separate file for such confidential information.

YES

Have job descriptions been reviewed to distinguish between essential functions and marginal functions? _____ NO _____

Review job descriptions. Modify to reflect current functions performed in job.

If no written job descriptions, consider developing to ensure uniformity.

YES

Provide current job descriptions to current workers.

Have evaluation forms been used to measure job performance consistency with job descriptions? _____ NO _____

Review evaluation forms. Modify as necessary.

YES

Compliance Goals**Action Steps**

Has a reasonable accommodation policy and procedure been developed to handle requests from incumbents?

—— NO ——

Utilize Worksheet 4 to develop such a policy and distribute as appropriate.

YES

Have policies for in-house transfers or promotion been reviewed to ensure that process is nondiscriminatory?

—— NO ——

Review policies and procedures governing transfer barriers to people with disabilities.

YES

Have training programs, both in-house and outside opportunities been reviewed to ensure that content is available in alternate formats if requested and any other reasonable accommodations have been provided? Are sites physically accessible?

—— NO ——

Develop mechanism for staff to request accommodations in a timely manner for scheduled trainings.

Identify and develop alternate formats where appropriate such as captioning training videos, text in large print, audio cassette and Braille.

YES

Identify resources available for interpreters, assistive listening devices, notetakers or reader services as possible accommodations.

Identify staff liaison with outside entities conducting trainings and include among responsibilities ensuring site accessibility and provision of auxiliary aids and services. Use *Action Guide*, Worksheet 6 for facility checklist.

Compliance Goals**Action Steps**

Has scope of required medical examinations performed on a routine or return-to-work basis been limited to job-relatedness and business necessity? — NO —

Identify medical personnel who perform such exams. Provide medical personnel with job descriptions for workers being examined.

YES

Review medical forms and revise, if necessary, so content is job-related and examination related to ability to perform essential functions.

Have all employer sponsored activities such as social events, recreational activities, day care, transportation been reviewed to ensure site and content access? — NO —

Identify all employer sponsored activities. Develop protocol to ensure site checks for access and procedure for requesting accommodation in timely manner. Utilize *Action Guide*, Worksheet 6, for facility checklist.

YES

Has personnel manual been reviewed to be current with ADA requirements? — NO —

Utilize checklist from Worksheet 2 and revise content as appropriate.

YES

Have fringe benefits such as health insurance been reviewed to ensure equal access including self-insured plans? — NO —

Review policy language and practices of third party and make changes necessary to ensure uniform application of terms and restrictions.

YES

Append all documentation relating to the action steps to completed Worksheet 3.

REASONABLE ACCOMMODATION

4

Although reasonable accommodation is clearly determined on an individualized basis, public entities can anticipate certain types of accommodation requests and take steps to meet those requests. This supplements *Action Guide*, pp. 26-29, "Reasonable Accommodation: The Employer's Responsibility," "Choosing the Accommodation," "The Counterbalance: Undue Hardship." Parts A and B of Worksheet 4 provide some common examples of accommodations that may be requested at various steps in the hiring process or stages of the employment relationship. Development of a reasonable accommodation policy and procedure, including identification of the responsible staff person for handling such requests, will ensure consistency, efficiency, and cost effectiveness in the entity's response. Entities should also include planning for reasonable accommodation requests as part of a budget process.

Part C focuses on analyzing accommodation requests that may cause an undue hardship on the entity. The burden on public entities to provide accommodations is very high and careful deliberation should be undertaken before a refusal is issued. Also, entities should consider whether alternative accommodations that do not pose an undue hardship are available.

Public employers should develop a protocol for handling requests for accommodation. Such requests may take one of these forms: applicants may request accommodations with respect to the hiring process itself or, in the context of the interview, a request may be made for an accommodation on the job. Incumbent workers may request on the job accommodations or accommodations for trainings or other employer-sponsored activities. For example, an applicant who is deaf may request that a sign language interpreter be present for a job interview or an applicant who is blind may request reasonable accommodation for completion of a job test such as typing. Anticipating such requests, identifying local resources and adopting a protocol ensure smooth and consistent handling of requests for accommodation.

Title II entity _____ Program _____

Worksheet completed by _____ Telephone _____ Date _____

PART A: TYPES OF ACCOMMODATION CHECKLIST

Directions: The left hand column illustrates many common types of reasonable accommodation. For each stage of the employment process where a reasonable accommodation may be requested, please check (X) if available and note with "D", those needing development.

Types of Accommodation	Stages of Employment			
	Application	Interview, Training Activities	On-the-Job	Social, Recreational
Large Print (e.g. 18 pt font)				
Braille				
Audiocassette				
Computer Diskette				
Reader				
Interpreter				
Notetaker				
TDD				

PART A, CONTINUED

Types of Accommodation	Stages of Employment			
	Application	Interview, Training Activities	On-the-Job	Social, Recreational
E-Mail				
Captioning/Decoder				
Computer Aided Real Time Reporting (CART)				
Provide assistance				
Purchase hardware				
Purchase other computer adaptations/software				
Part-time				
Flex-time				
Work site modifications				
Job site modifications				
Job restructuring				
Job reassignment (for incumbents only)				
Other				

PART B: IDENTIFICATION OF ACCOMMODATIONS RESOURCES

Directions: To create a resource bank for accommodation resources, identify how each of the (X) items from Part A is provided. Repeat the process for (D) items as an aid in development.

Stage of Employment (insert from Part A): _____

Responsible Staff Person: _____

Identification of Resources

Type(s) of Accommodation	Within Department	Within Entity	Outside Entity
1.			
2.			
3.			
4.			
5.			
6.			

PART C: ANALYSIS OF ACCOMMODATION REQUESTS

Responsible Staff Person (Agency Head or Designee): _____

1. Type of accommodation requested: _____

2. Cost (estimate): _____

3. Financial resources of facility (number of employees and effect on resources and expenses):

4. Financial resources of public employer (number of employees, number, type and location of facilities): _____

5. Type of operation (composition, structure and function of workforce, geographic separateness, administrative or fiscal interrelationship): _____

6. Impact of requested accommodation on business operation: _____

7. If undue hardship is concluded, alternative accommodations considered and offered to employee:

Append all supporting documentation to completed Worksheet 4.

ESSENTIAL JOB FUNCTIONS

5

Employers must reexamine the positions in their workforce and consider job responsibilities through the “essential functions” terminology used in the ADA. This supplements *Action Guide*, pp. 25-26 “Essential Functions of the Job.” Readers should review that section and the discussion concerning types of evidence to determine whether a particular job function is essential, before completing the worksheet. For example, many public entities use generic job descriptions that cover a number of positions in which the performance of specific functions varies. In that situation, the EEOC would give greater weight to actual job duties rather than the written description. This worksheet provides a vehicle to identify job categories and determine essential functions in each job. Although job descriptions are not required by the regulations, it is recommended that public employers develop or update job descriptions. There are several useful publications and trainings for refining job descriptions listed in the resource section of the *Action Guide*.

Title II entity _____ Program _____

Worksheet completed by _____ Telephone _____ Date _____

Job Categories

Identify job categories within employee population: _____

Name of entity: _____

Name of department: _____

Name of unit: _____

Job categories: _____

For each job category, determine the following:

Does a current job description exist? ☐ Yes ☐ NoDoes the description identify essential job functions? ☐ Yes ☐ NoIs there a collective bargaining agreement that contains a job
description? ☐ Yes ☐ No

Job Descriptions

If there is no existing job description and you wish to develop one, consider the following process:

1. Obtain descriptions of job functions from past or current employees in the job category:
 - a. ask workers to distinguish between essential and marginal functions;
 - b. identify percentage of time spent performing each function.

2. Obtain descriptions from supervisors of each job category:
 - a. ask supervisors to distinguish between essential and marginal functions;
 - b. identify percentage of time spent performing each function;
 - c. determine the consequence of not requiring that the function be performed.

3. Develop a proposed job description identifying essential functions.

4. Distribute job descriptions to all workers in each job category.

Append all documentation on actions taken for determining essential job functions to Worksheet 5.

Section I

Questions in regular type are permissible. *Questions in bold type are impermissible.*

Name (Last, First, Middle initial):

Street Address:

City:

State:

Zip Code:

Area Code & Telephone Number:

Are you available for permanent employment? ☐ Yes ☐ No

Are you available for temporary employment? ☐ Yes ☐ No

Do you have any disability? ☐ Yes ☐ No

If yes, please describe:

Have you been hospitalized in the last five years for treatment of a physical illness or surgery? ☐ Yes ☐ No

If yes, please describe:

Have you been hospitalized in the last five years for treatment of a mental illness or substance abuse disorder? ☐ Yes ☐ No

Section II - Experience Report

List and describe your work experience. Begin with your present position and work backwards. Include title changes resulting in promotions. List pertinent military experience. Omissions or misstatements of material facts may cause forfeiture of rights to employment.

VOLUNTEER EXPERIENCE: Related volunteer experience for which no salary was received will be given the same credit as equivalent paid experience. List the actual number of hours worked per week or month, and describe fully the duties performed so appropriate consideration can be given.

Currently (or last) employed by:

Address:

Dates of employment: from (mo/yr) to (mo/yr):

Total: (years /months):

Hours worked per week (month):

Payroll Title:

Salary (starting & ending):

If you had supervisory responsibility for any of the following on a *continuing basis*, indicate in the appropriate box the *number* of employees involved:

Manual/Trades _____ Clerical/Technical _____ Professional/Admin. _____

List and describe your duties and responsibilities:

Reason for leaving:

Employed By:

Address:

Dates of employment: from (mo/yr) to (mo/yr):

Total: (years/months):

Hours worked per week/month:

Payroll Title:

Salary (starting & ending):

If you had supervisory responsibility for any of the following on a *continuing basis*, indicate in the appropriate box the *number* of employees involved:

Manual/Trades _____

Clerical/Technical _____

Professional/Admin. _____

List and describe your duties and responsibilities:

Reason for leaving:

If additional space is needed, attach a separate sheet(s), following the format on this page. Place the sheet inside the application.

Section II, continued

REFERENCES:	NAME	ADDRESS	BUSINESS	TEL. /FAX NO.
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1.

2.

3.

Have you ever filed for workers' compensation benefits? ☐ Yes ☐ No

If yes, please describe nature of injury and resolution of benefits matter:

Section III - Formal Education

List your education accurately and completely.

(Circle No. Years completed)

High School 0 1 2 3 4 Graduated? ☐ Yes ☐ No

GED Received GED Cert. ☐ Yes ☐ No

College-University 0 1 2 3 4 5 6 7 8 Graduated? ☐ Yes ☐ No

Business, Trade or Correspondence School:

Subject:

From (Mo/Yr) to (Mo/Yr)::

Name/Location:

Section III - Formal Education, continued

Technical/Professional License(s):

Number:

State Issued:

Date Issued (Mo/Yr):

Current? ☐ Yes ☐ No

Internship:

Type of Internship:

Facility Name - Address:

From (Mo/Yr) to (Mo/Yr):

Names of Colleges or Universities Attended:

Undergraduate - name/city/state:

Total # hrs/yrs attended:

Major/Minors:

Degree or Certificate/Dates:

Graduate - name/city/state:

Total # hrs/yrs attended:

Major/Minors:

Degree or Certificate/Dates: