

American Recovery and Reinvestment Act (ARRA) and the Americans with Disabilities Act (ADA)

The State's ADA program would like to remind Recovery Act recipients about obligations under the ADA to promote access and to avoid costs associated with non-compliance. Recipients are welcome to consult the state's [ADA program](#) and the attached/following resources for help.

Jason C. Burke

State of Alaska ADA Coordinator

Voice/TTY: 907.465.6929

<http://www.labor.state.ak.us/ada/home.htm>

The American Recovery and Reinvestment Act of 2009 and the ADA

What You Need To Know

As part of the economic stimulus package, Congress passed and President Obama signed into law the [American Recovery and Reinvestment Act of 2009](#). Funds are being distributed by Federal agencies to States and communities throughout the country to build, repair, and upgrade a wide range of facilities, systems, and programs.

The Department of Justice wants to take this opportunity to remind State and local government officials, business owners, and building professionals of their obligations under the Americans with Disabilities Act (ADA). Generally, agencies or companies that build new facilities or alter existing facilities must comply with the [ADA Standards for Accessible Design](#). The ADA also requires that all [State and local government programs and services](#) and all [goods and services offered to the public by businesses](#) be accessible to people with disabilities.

We at the Department of Justice can help you understand your responsibilities. If you have a question about what you are required to do, you can call our toll-free [ADA Information Line](#). All government and business callers will be able to speak confidentially to an ADA Specialist during normal business hours to discuss how the ADA applies to their specific situations and get answers to any ADA questions they might have. If you want to read or download the [ADA Standards for Accessible Design](#), you can go to our [ADA Website](#), where the Standards and a wealth of other ADA information are available to you, day or night. You can also contact sources in your area by calling the toll-free number of the National Network of ADA Centers.

ADA Information Line

800-514-0301 (Voice)

800-514-0383 (TTY)

Mon-Wed, Fri 9:30 am to 5:30 pm (ET)

Thurs 12:30 pm to 5:30 pm (ET)

ADA Website www.ada.gov

National Network of ADA Centers 800-949-4232

Recovery Requires Accessibility

Stimulus projects must meet federal access standards **March 30, 2009**

The recent stimulus bill, also known as the “American Recovery and Reinvestment Act,” funds a wide array of projects and programs to jump start the economy and create jobs. The \$787 billion measure provides aid to cities and states, supports tax cuts, and funds initiatives to improve infrastructure, transportation, energy efficiency, education, and health care.

Various Federal agencies are responsible for spending and distributing stimulus funds. It is important that these agencies and funding recipients comply with all applicable laws, including those protecting the rights of people with disabilities. They include the: www.recovery.gov

- Americans with Disabilities Act (ADA), which bans discrimination on the basis of disability by state and local governments and private sector entities in employment, programs and services, transportation, and the built environment;
- Architectural Barriers Act (ABA), which requires access to facilities designed, built, altered or leased with federal funds; and the
- Rehabilitation Act, which covers access to federally funded programs, federal employment, and electronic and information technology in the federal sector.

Standards issued under these laws include ADA standards for facilities and transportation vehicles, ABA standards for federally funded facilities, and standards for electronic and information technology issued under Section 508 of the Rehabilitation Act.

The U.S. Access Board leads the development and upkeep of these standards and provides technical assistance and training on them to the public. The Board is available to provide further guidance on applying these standards to Recovery Act projects. The Board also offers supplementary resources that explain how accessibility can be integrated into certain types of projects.

Accessibility Standards and Resources

Accessibility standards apply according to the nature and scope of projects and the funding involved.

Facility Construction and Renovation

The Recovery Act funds the construction and renovation of federal buildings, including U.S. courthouses, customs and border protection facilities, and other facilities operated by federal agencies. These and most other construction or renovation projects undertaken with federal dollars must meet the ABA accessibility standards. State and local government facilities, as well as places of public accommodation and commercial facilities, must comply with ADA standards in new construction and alterations (whether or not federal funds are used). See the Board's [guide](#) to the ADA and ABA standards for further details and related information.

Transportation Systems

The Recovery Act supports projects to improve and expand public transportation throughout the nation. The ADA comprehensively covers access to public transportation. New and altered facilities, including rail stations, bus stops, and airports, are subject to [ADA standards](#) for transportation facilities. New or remanufactured buses, vans, rail cars, and other modes of public transit must meet [ADA vehicle standards](#). Issued by the Department of Transportation, these standards are based on Access Board guidelines.

The Rehabilitation Act (Section 504) requires access to transportation systems receiving federal funds. Compliance with ADA standards for transportation facilities and vehicles will help entities fulfill section 504 obligations.

Housing

Housing that is federally funded is subject to the ABA or the Rehabilitation Act (Section 504). An earlier version of the standards, the [Uniform Federal Accessibility Standards](#) (UFAS), is in effect for housing under these laws. Housing owned or operated by state or local governments is covered by the ADA whether or not federal funds are involved. At this time, state and local governments can follow UFAS as well under the ADA. In addition, guidelines may apply under the [Fair Housing Act](#) which covers most multifamily housing.

Streets and Sidewalks

Many types of infrastructure projects will impact or improve public streets and sidewalks. It is important that work involving streetscapes integrate accessibility. The Access Board is developing new guidelines for public rights-of-way as a supplement to the ADA and

ABA standards. These guidelines will address street crossings, sidewalks, on-street parking, common constraints, and other topics. [Draft guidelines](#) released by the Board are widely being used as an interim resource until final guidelines are issued. Other [resources](#) on rights-of-way accessibility are also available from the Board.

Outdoor Environments and Recreation Facilities

Recovery Act projects involving parks and other outdoor sites must also incorporate accessibility but, as with public rights-of-way, existing standards lack sufficient detail. The Access Board is developing new guidelines for outdoor developed areas that will address trails, camp sites, picnic areas, and beach access routes. [Guidelines](#) proposed by the Board can be used as a reference at this time since final guidelines are pending. In addition, final guidelines are available that address access to [play areas](#) and other [recreation facilities](#).

Information Technology

It is likely that Recovery Act money will be used to acquire or upgrade IT systems and infrastructure. Electronic and information technologies procured by federal agencies must be accessible under the Rehabilitation Act (Section 508) and meet the Board's [508 standards](#). These standards cover computer hardware and software, websites, phone systems, videos, copiers, and similar technologies. Non-federal entities can follow these standards voluntarily to make sure acquired technology is accessible. For more information on Section 508, visit www.section508.gov.

Technical Assistance and Training

Technical assistance on the standards and accessible design is available from the Board through its toll-free help line at (800) 872-2253 (voice) or (800) 993-2822 (TTY), or by email at ta@access-board.gov. The Board also provides training upon request. Training requests should be directed to the Board's Training Coordinator, Peggy Greenwell, at training@access-board.gov, (202) 272-0017 (voice), or (202) 272-0082 (TTY).

A [notice](#) (Word file) on the standards and Board services is available for dissemination by other agencies and entities.

Other Resources

Americans with Disabilities Act

Information on other requirements of the ADA is available from:

- Disability and Business Technical Assistance Centers (a national network of regional centers that provide information on all parts of the ADA)
www.adata.org (800) 949-4232 (voice or TTY)
- U.S. Department of Justice
www.ada.gov (800) 514-0301 (voice) or (800) 514-0383 (TTY)
- U.S. Department of Transportation (transportation access)
www.fta.dot.gov (202) 366-4648 (voice)

- Equal Employment Opportunity Commission (employment and hiring practices)
www.eeoc.gov (800) 669-4000 (voice) or (800) 669-6820 (TTY)

The Rehabilitation Act (Section 504)

Federally funded programs are required to be accessible under section 504 of the Rehabilitation Act. Federal agencies are responsible for ensuring that the programs they fund are compliant. For further information, see the Board's list of agency [504 contacts](#).

American Reinvestment and Recovery Act

Accessibility Resources

State Agencies

Alaska.gov/recovery

http://omb.alaska.gov/10_omb/budget/IndexEconomicStimulus.htm

State ADA Compliance Program

<http://www.labor.state.ak.us/ada/home.htm>

Department of Transportation – Civil Rights

<http://www.dot.state.ak.us/cvlrts/index.shtml>

Alaska State Commission for Human Rights

<http://gov.state.ak.us/aschr/>

Federal Agencies

Recovery.gov

<http://www.recovery.gov/>

Accessibility: <http://www.recovery.gov/?q=content/accessibility>

U.S. Department of Justice

<http://www.ada.gov/>

U.S. Access Board

<http://www.access-board.gov/recovery/>

Equal Employment Opportunity Commission (employment and hiring practices)

www.eeoc.gov (800) 669-4000 (voice) or (800) 669-6820 (TTY)

Federal Transit Administration ARRA and Civil Rights

http://www.fta.dot.gov/civilrights/civil_rights_9311.html

U.S. Department of Transportation (transportation access)

www.fta.dot.gov (202) 366-4648 (voice)

American Recovery and Reinvestment Act of 2009: IDEA Recovery Funds for Services to Children and Youths with Disabilities

<http://www.ed.gov/policy/gen/leg/recovery/factsheet/idea.html>

Recovery Act - American Recovery and Reinvestment Act (ARRA): Tribal Transit Program

http://www.raonline.org/funding/funding_details.php?funding_id=1291

HHS.Gov/Recovery

<http://www.hhs.gov/recovery/>

The Rehabilitation Act (Section 504)

Federally funded programs are required to be accessible under section 504 of the Rehabilitation Act. Federal agencies are responsible for ensuring that the programs they fund are compliant. For further information, see the Board's list of agency [504 contacts](#).

<http://www.access-board.gov/enforcement/504.htm>

Technical Support - Assistance

Northwest Disability business Technical Assistance Center

<http://www.dbtacnorthwest.org/>

ADA Partners Project

http://www.accessalaska.org/access_alaska_services/ada_partners_project/

Centers for Independent Living

<http://www.alaskasilc.org/cil.cfm>

ACCESS BASICS: THE LAWS, THE REGULATIONS, THE STANDARDS (and where they come from)

The Americans with Disabilities Act and Section 504

Prepared by Irene Bowen, J.D. Email: IreneBowen@ADA-One.com



FRAMEWORK FOR LAWS AND REGULATIONS (Civics 101 PLUS what they didn't teach you)

Law: A statute passed by Congress. Examples:

- The Rehabilitation Act of 1973 (**section 504**, covering recipients of federal financial assistance, is part of it)
- The **ADA** (Americans with Disabilities Act), including **title II** (state and local governments) and **title III** (public accommodations)
- The **ABA** (Architectural Barriers Act), applying to Federal (and some federally assisted) construction, leasing, and alterations

Regulation or rule: Binding requirements issued by agencies or departments, according to what the law (statute) says.

- Regulations/rules give more details about what the law means.
- Examples: section 504 regulations of the Department of Education, ADA (title II and title III) regulations of the Department of Justice.
- Regulations are binding/mandatory. They have the force of law, which means they can be enforced through administrative or court proceedings.

Standards: Enforceable accessibility requirements for new construction and alterations.

- These are part of a regulation.
- These usually have both scoping and technical portions. **Scoping** provisions say what is covered and how many of each space or element (e.g., parking spaces, elevators, entrances, rest rooms) must be accessible. **Technical** provisions describe what makes a space or element “accessible” (e.g., dimensions, material, slope).

Guidelines: Usually, a “floor” (minimum, baseline) for regulations and/or standards. A statute may say that one agency develops guidelines, and that another agency’s regulations or standards have to meet or exceed those guidelines.

- The guidelines are not enforceable unless another agency adopts them as regulations.
- Other agencies’ standards have to be at least as strict as the guidelines (if the law says so). For example:
 - The Access Board develops guidelines for the ADA and ABA standards.
 - DOJ develops guidelines for other agencies’ section 504 regulations (not just accessibility requirements).

BUT sometimes the word “guideline” is used to refer to advisory information.

ACCESS BASICS: THE LAWS, THE REGULATIONS, THE STANDARDS (and where they come from)

The Americans with Disabilities Act and Section 504

Prepared by Irene Bowen, J.D. Email: IreneBowen@ADA-One.com



Appendix: An “attachment” to a regulation or guideline. It can be binding or just informative. If you’re not confused yet, try this: DOJ’s title III regulation has an Appendix A, the “ADA Standards” (see below). These standards are binding for title III. The regulation also has an Appendix B, which is an analysis of the regulation and of the comments made by the public. But Appendix A has an appendix too! It provides advisory information that correlates with the sections of the ADA Standards and that is intended to help the reader understand those sections.

FEDERAL AGENCIES (Who writes these things, anyway?)

Access Board: It does research, enforces the Architectural Barriers Act, and develops accessibility guidelines for other agencies’ ADA and ABA standards.

DOJ: U.S. Department of Justice.

- DOJ issues government-wide guidelines for section 504.
- DOJ issues ADA regulations for title II and title III (BUT see DOT).
- DOJ enforces title II, title III, and section 504.

DOT: U.S. Department of Transportation. It issues regulations for transportation aspects of the ADA and section 504.

OCR: Office for Civil Rights. Almost all Federal departments have an OCR, which oversees implementation of several civil rights laws, including section 504 (and sometimes the ADA). For example, OCR at the Department of Education issues section 504 rules applying to recipients of its funds. It investigates complaints about education under section 504 and title II.

CODES, GUIDELINES, AND STANDARDS (What do you mean, the ADA isn’t a building code?)

Generally, a building code sets minimum safety and performance requirements for new construction and major alterations. Codes are adopted and enforced by a local or state jurisdiction. For example, cities usually have codes addressing electrical, plumbing, fire safety, accessibility, and other construction issues. A city will review plans for new buildings for code compliance, issue a permit for the work, and inspect final construction for compliance with plans and codes.

ACCESS BASICS: THE LAWS, THE REGULATIONS, THE STANDARDS (and where they come from)

The Americans with Disabilities Act and Section 504

Prepared by Irene Bowen, J.D. Email: IreneBowen@ADA-One.com



BUT the ADA is a **Federal civil rights law**. It requires new construction and alterations to be accessible, according to Federal standards. There are no Federal ADA plan reviewers or building inspectors. Only the Federal government (and individuals) can enforce the ADA. In addition -- unlike a building code -- other parts of the ADA (e.g., barrier removal, program access, most integrated setting) address access to facilities, programs, and services in the context of the civil right to receive services and to participate in programs and activities.

ADA Standards (sometimes “the Standards”): The ADA Standards issued by DOJ and DOT.

- DOJ’s standards: These are the accessibility standards (also **ADA Standards for Accessible Design**) that must be followed for title III new construction and alterations. As of February 2009, the standards are those issued in 1991 and amended in 1994. Title II entities can choose between these and UFAS. In June 2008 DOJ proposed to adopt new standards (**“the proposed standards”**) for title II and title III that would be the same as the new ADAAG, but DOJ has not taken final action. Note: The ADA Standards are currently located in an appendix to the title III regulation of DOJ.
- DOT’s standards: These are the standards that must be followed for purposes of transportation facilities such as bus stops, rail stations, and airports. The ones effective as of February 2009 were issued in 2006 and are based on 2004 ADAAG with some additions. (In 1991 and 1994 DOT had adopted the original ADAAG.)

ADAAG: Americans with Disabilities Act Accessibility Guidelines (developed by the Access Board). The ADA says that federal ADA accessibility standards, which are issued by DOJ and DOT, must be at least as stringent as these.

“Original” ADAAG or 1991/1994 ADAAG: DOJ and DOT adopted these, word for word, as standards for the ADA.

“New” ADAAG or 2004 ADAAG: Guidelines developed by the Access Board and based largely on 2003 ANSI A-117.1 and 2000/2003 IBC. In June 2008 DOJ proposed to adopt new standards for title II and title III that would be the same as the new ADAAG, but DOJ has not taken final action.

ACCESS BASICS: THE LAWS, THE REGULATIONS, THE STANDARDS (and where they come from)

The Americans with Disabilities Act and Section 504

Prepared by Irene Bowen, J.D. Email: IreneBowen@ADA-One.com



Note: The Access Board continually works to expand and refine the ADAAG. The ADAAG that was first issued in 1991 was expanded in the following years:

- *Automated teller machines (ATMs) (1993)*
- *Transportation facilities (1993)*
- *State and local government facilities (1998)*
- *Building elements designed for children's use (1998)*
- *Play areas (2000)*
- *Recreation facilities (2002)*

The 1998, 2000, and 2002 ADAAG were not adopted by DOJ as ADA Standards.

ANSI: American National Standards Institute. ANSI is a private group that has developed many “industry standards” or “consensus standards,” including ANSI A-117.1 (accessible buildings and facilities). These are usually technical standards. Although ANSI’s publications are called “standards,” they really are a type of model for standards. They aren’t enforceable unless a government entity adopts them.

The 1961 ANSI Standard was the original standard under the Architectural Barriers Act and section 504. “New ADAAG” is based largely on recent (e.g., 2003) ANSI Standards.

IBC: International Building Code. This is a private “model code,” also developed by a private group (the International Code Council). “New ADAAG” is also based largely on this code. A number of state and local governments have adopted the accessibility portion of the IBC, in whole or in part. The IBC contains scoping requirements. It references ANSI Standards for the technical provisions. (See page 1 for an explanation of “scoping” and “technical” provisions.)

UFAS: The Uniform Federal Accessibility Standards, issued in 1984, originally for purposes of new construction and alterations under the Architectural Barriers Act. Generally, if a recipient of federal funds follows UFAS, it is in compliance with section 504. Under title II of the ADA, a state or local government can choose to follow UFAS or the ADA Standards.

RESOURCES:

Physical Accessibility under the ADA and Related Laws

Prepared by Irene Bowen, J.D. Email: IreneBowen@ADA-One.com

This document sets out a variety of resources for those interested in enhancing physical access under the Americans with Disabilities Act and related statutes. All references are to links that are available to the public without charge or subscription.

I. STATUTES AND REGULATIONS

Americans with Disabilities Act (as amended by the ADA Amendments Act, effective January 1, 2009; and the ADA before the amendments):

<http://www.ada.gov/pubs/ada.htm>

Overview and text:

<http://www.access-board.gov/about/laws/ada.htm#Text>

ADA Amendments Act resources:

<http://www.law.georgetown.edu/archiveada/#News>

Title II regulation (Department of Justice), 28 C.F.R. Part 35:

<http://www.ed.gov/policy/rights/reg/ocr/edlite-28cfr35.html>

Title III regulation (Department of Justice), 28 CFR Part 36:

www.ada.gov/reg3a.html

ADA Standards for Accessible Design:

www.ada.gov/stdspdf.htm

Uniform Federal Accessibility Standards:

www.access-board.gov/ufas/ufas-html/ufas.htm

DOT's ADA regulations, 49 C.F.R. Part 37:

http://www.access.gpo.gov/nara/cfr/waisidx_03/49cfr37_03.html

Section 504 of the Rehabilitation Act of 1973, as amended

Section 504 is part of title V of the Act:

<http://www.access-board.gov/enforcement/Rehab-Act-text/intro.htm>

[Note: this version does not include amendments made by the ADA Amendments Act, effective January 1, 2009.]

RESOURCES:

Physical Accessibility under the ADA and Related Laws

Prepared by Irene Bowen, J.D. Email: IreneBowen@ADA-One.com

Section 504 regulations of the Department of Justice for federally assisted programs, 28 C.F.R. Part 41:

http://www.access.gpo.gov/nara/cfr/waisidx_03/28cfr41_03.html

Section 504 regulations of the Department of Education for federally assisted programs, 34 C.F.R. Part 104:

http://www.access.gpo.gov/nara/cfr/waisidx_99/34cfr104_99.html

American Recovery and Reinvestment Act (ARRA) of 2009, signed by the President February 17, 2009:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf

ARRA summaries, timelines, and implementation information:

<http://www.recovery.gov/>

FAIR HOUSING AMENDMENTS ACT

Summaries and accessibility guidelines:

www.fairhousingfirst.org

II. DEPARTMENT OF JUSTICE (see generally www.ada.gov, DOJ's ADA web site)

A. DOJ's proposed ADA regulations

Notices of proposed rulemaking:

73 Fed Reg 34465-34557 and 36964-37055 (June 17 and 30, 2008)

At www.ada.gov:

- Proposed rules for title II and title III
- Proposed standards (2004 ADA Guidelines from Access Board (ADAAG)) (also at www.access-board.gov)
- Public hearing (webcast) July 15, 2008
- Appendix A: DOJ's analysis of comments on Advanced Notice of Proposed Rulemaking (2004) and ADAAG provisions
- Appendix B: Regulatory impact analysis (RIA) (methodology, costs/benefits)

Public comments submitted on DOJ's proposed regulations:

Go to www.regulations.gov and search for ADA, then click on DOJ

RESOURCES:

Physical Accessibility under the ADA and Related Laws

Prepared by Irene Bowen, J.D. Email: IreneBowen@ADA-One.com

Side-by-side comparison of 2004 ADAAG, the original ADA Standards, and the International Building Code (2003 edition):

<http://www.access-board.gov/ada-aba/comparison/index.htm>

B. Technical assistance materials

Title II Technical Assistance Manual and supplement:

<http://www.ada.gov/taman2.html>

<http://www.ada.gov/taman2up.html>

Title III Technical Assistance Manual and supplement:

<http://www.ada.gov/taman3.html>

<http://www.ada.gov/taman3up.html>

ADA Best Practices Tool Kit for State and Local Governments:

<http://www.ada.gov/pcatoolkit/toolkitmain.htm>

An ADA Guide for Local Governments: Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities:

<http://www.ada.gov/emergencyprepguide.htm>

III. DEPARTMENT OF EDUCATION

OCR Case Processing Manual (2008):

<http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>

“Dear Colleague” letter re: title II, section 504, returning veterans (July 25, 2008):

<http://www.ed.gov/about/offices/list/ocr/letters/colleague-20080725.html>

IV. EMERGENCY PREPAREDNESS

Web sites with helpful resources and links:

www.disabilitypreparedness.gov

www.access-board.gov

<http://www.disabilityinfo.gov/digov-public/public/DisplayPage.do?parentFolderId=213>

RESOURCES:

Physical Accessibility under the ADA and Related Laws

Prepared by Irene Bowen, J.D. Email: IreneBowen@ADA-One.com

<http://www.espfocus.org/> (individual preparedness)

NFPA's Emergency Evacuation Planning Guide for People with Disabilities

<http://www.nfpa.org/assets/files/PDF/Forms/EvacuationGuide.pdf>

National Council on Disability: Including People with Disabilities in Emergency Planning

http://www.ncd.gov/newsroom/publications/2005/saving_lives.htm

From the Federal Emergency Management Agency:

Comprehensive Preparedness Guide 301: Special Needs Planning

<http://www.fema.gov/news/newsrelease.fema?id=45436>

Accommodating Individuals with Disabilities in the Provision of Disaster Mass Care, Housing, and Human Services (Section 689 reference guide)

<http://www.fema.gov/oer/reference/index.shtm>

Preparing for Disaster for People with Disabilities and other Special Needs

<http://www.fema.gov/library/viewRecord.do?id=1442>

Dealing with Disabilities: Tips for First Responders

<http://www.hhs.gov/od/tips.html>

Transportation and Emergency Preparedness Checklist

<http://www.dotcr.ost.dot.gov/Documents/Emergency/Emergency%20Checklist.doc>

CONTACT:

Irene Bowen, J.D., ADA-One, LLC

9 Montvale Court

Silver Spring, MD 20904

<http://ADA-One.com>

Email: IreneBowen@ADA-One.com

Phone: 301 879 4542

Fax: 301 236 0754