


# Accessibility Legislation



Section 504 of the Rehabilitation Act  
of 1973 (29 USC 794(a))  
Americans with Disabilities Act (ADA)  
of 1990 (42 USC 12111)



## Definition: Authority

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Statutes: U.S.C.: United States Code:

find text through [www.gpo.gov](http://www.gpo.gov) and  
[www.gpoaccess.gov/uscode](http://www.gpoaccess.gov/uscode)

Regulations: C.F.R.: Code of Federal Regulations:

[www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html); [www.ada.gov](http://www.ada.gov);  
[www.dot.gov/regulations.html](http://www.dot.gov/regulations.html)

Guidance:

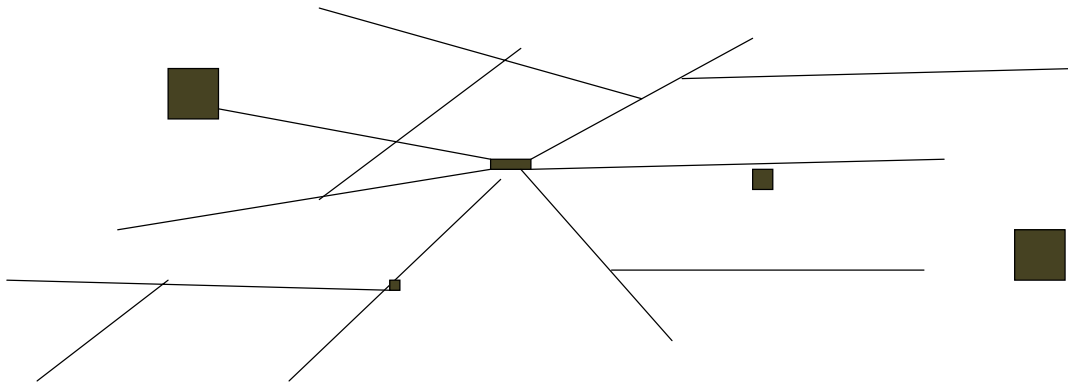
USDOJ: [www.ada.gov](http://www.ada.gov)

Federal Highway Administration:  
[www.fhwa.dot.gov/civilrights/admin.htm#memoranda](http://www.fhwa.dot.gov/civilrights/admin.htm#memoranda)

## Definition: Public Rights-of-Way (PROW)

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- The PROW is the network of streets and sidewalks creating public pedestrian access within a public entity's jurisdictional limits.



## Statutory language

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Section 504: 29 USC § 794

No otherwise qualified "individual with a disability in the United States . . . Shall solely by reason of her or his disability, be **excluded from participation** in, be denied the benefits of, or be **subjected to discrimination** under any program or activity **receiving Federal financial Assistance** or under any program or activity conducted by any Executive agency . . ."

ADA: 42 USC 12111 et seq: Title II, Part A:

" . . . no qualified individual with a disability shall , by reason of such disability, be **excluded from participation** in or be denied the benefits of the services, programs, or activities of a **public entity**, or be **subjected to discrimination** by any such entity."

## Enforcement

- Overlapping enforcement powers over public agencies:
  - (1) Section 504 covers public agencies spending federal funds.
  - (2) ADA Title II covers public agencies with power over PROW.

## Compliance Responsibilities for State and Local Governments

<u>Institutions</u>	<u>Section 504</u>	<u>ADA</u>
STA Recipients (SDOTs) and Subrecipients (MPOs)	X	X
Local Governments that DO receive FHWA Funds	X	X
Local Governments that DO NOT receive FHWA funds		X



## Nondiscrimination” General Rules

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- In PROW, each public entity must ensure that pedestrian facilities meet Uniform Federal Accessibility Standards (UFAS) or ADA Accessibility Guidelines (ADAAG) standards: FHWA encourages ADAAG. 28 CFR 35.151( c); USDOJ Technical Assistance II-6.2100.



## Ultimate Remedies

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- Where noncompliance exists:
  - For Federal-aid recipient: FHWA can withhold federal money, after enforcement process required at 49 C.F.R. §§ 27.121 – 27.129.
  - For State or local government, regardless of federal funds: FHWA shall seek voluntary compliance agreement with public agency, and if voluntary negotiations are unsuccessful, shall send case to the Attorney General for appropriate action.



## Public Entity Responsibilities

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- Primary method: Planning for Program Access:
  - Use planning processes, including transition plans, to ensure ADAAG compliant access for persons with disabilities to the public right-of-way.
  - Planning processes: including pedestrian planning aspects of new planning rule for MPOs. 23 CFR Part 450 (effective 3/16/07).



## Public Entity Responsibilities

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- Secondary method: Projects:
  - New and alteration projects with pedestrian facilities in the scope of the project must meet ADAAG standards to the maximum extent feasible.



## State and Local Governments & Pedestrians

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- Principle: State and local governments must provide curb ramps at pedestrian crossings and at public transportation stops where walkways intersect a curb.
- Walkways include areas where people must walk to access transit stops
- Intersections requiring curb ramps include any intersection where it is legal for a pedestrian to cross the street, whether or not there is any designated crosswalk.



## Facility Definition

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- Facility requiring curb ramps:
  - Intersection with intersecting sidewalk
  - Intersection where local law allows legal crossing, regardless of designated crosswalk or proximity to sidewalk



## Public Entities Obligations Under Title II and Section 504

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- ❑ Develop and implement a self-evaluation
- ❑ Develop and implement a transition plan
- ❑ Public notification of ADA/504 obligations
- ❑ Designate an ADA/504 Coordinator
- ❑ Develop complaint/grievance procedure



## Self-Evaluation

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- ❑ Required by ADA and Section 504 to be completed by both public entities and recipients, respectively
- ❑ Identifies services, policies and practices that are not accessible
- ❑ Plan is retained for three years
- ❑ Corrective action via Transition Plan



## Why use Transition Plans?

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- To provide a method for a public entity to schedule and implement ADA-required improvements to existing streets and sidewalks in the PROW.
- Required for curb ramp schedules but may be used for the sidewalks and detectable warnings aspects for ADAAG compliance.



## General Requirements

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- **Who:** Required for public entities with more than 50 employees.
- **What:** Schedules construction of curb ramps with detectable warnings for pedestrian access to existing PROW sidewalks and street access points.
- **Where:** Public right-of-way pedestrian facilities, with priority given to government buildings, transportation areas, etc. (EX: courthouse).





## How

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The Transition Plan schedule should:

- Identify existing facilities that limit access for persons with disabilities.
- Describe in detail methods to be used to make facilities accessible.
- Specify schedule for improving facilities by prioritizing needs of persons with disabilities in existing facilities.
- Indicate official responsible for implementation of plan.



## ADA & Section 504: Transition Plan: Specific regulatory elements

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- Provide opportunity to interested persons and groups to participate in self-evaluation leading to transition plan. 28 C.F.R. § 35.105(b).
- Make self-evaluation and plan available for public inspection:
  - Specific time frames and information required. 28 C.F.R. § 35.105(c) .



## Factors to be considered in development of the Transition Plan

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- Pedestrian Level of Service (PLOS) analyses
- Specific project demand
- Population density
- Presence of Disabled Population
- Existence of accessible features
- Cost



## ADA & Section 504: Transition Plans: Planning Issues

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- Integrate transition plan with the Statewide Transportation Improvement Plan (STIP) and Transportation Improvement Plan (TIP)
- Incorporate improvement projects into transition plan as identified
- Identify facilities needing to be added:
  - As alteration projects occur
  - As maintenance projects occur



## Other Things to Consider for Transition Plan Development

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- Developing a procedure for installation of accessible facilities
- Monitoring the transition plan via milestones
- Providing an avenue for citizens to request curb ramps, APS, sidewalk repair.
- Coordinating or incorporating transition plan with Pedestrian Master Plan or Bike-Pedestrian Plan, as well as the STIP and TIP



## Cost Issues

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- Cost analysis = Undue burden standard: only when improvement requires cost that, when compared to entire transportation program, would create an undue financial burden, may improvement be considered too costly.



## Timing and Updates

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- All public entities were to have transition plans by July 26, 1992
- Originally transition plan projects were to be completed by January 26, 1995.
- Update periodically, coordinate with STIP and TIP cycles.



## Transition Plans: Current State of Affairs

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- Local Governments are regularly being sued for not having transition plans or installing curb ramps (three cases in NJ right now)
- USDOJ: Project Civic Access – Settlement Agreements
- Not all FHWA recipients (State DOTs, MPOs, Counties, Towns) have developed, implemented, and completed Transition Plans.
- There are differences in scope and content among existing SDOT transition plans.
- Completion timelines and costs among recipients and public entities vary (no set requirement in the regulation beyond the 1993-1995 dates)



## New Projects

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- Design and construct all new facilities to be readily accessible to and useable by individuals with disabilities.
  - At minimum, in the public right-of-way, meet ADAAG standards, including:
    - Curb ramps with detectable warnings.
    - Unobstructed sidewalks with accessible slope, width.
  - Consider accessibility aids such as: accessible pedestrian signals and signs to facilitate safe street crossings.



## Alteration Projects

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- In an alteration project, a public entity must make accessible, any pedestrian facilities changed within the scope of the project to the maximum extent feasible.
  - Maximum extent feasible = technical feasibility, not cost.
  - Not primary method of improving accessibility.



## Alteration Projects

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### Alteration Definition:

- A change to a facility in the public right-of-way that affects, or could affect, access or use of the facility, including changes to structure, grade, or use of the facility.
- Examples: reconstruction, major rehabilitation, widening, resurfacing (such as structural overlays and mill and fill), signal installation and upgrades.



## Alteration Projects

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Maintenance is not an alteration.

### Maintenance Definition:

- Activities intended to preserve the system, retard future deterioration, and maintain functional condition of the roadway without increasing structural capacity.
- Examples: Liquid applied sealing, thin surface treatments (nonstructural), joint repair, pavement patching (such as filling potholes), shoulder repair, signing, striping, minor signal upgrades, and repairs to drainage systems.



## Alteration Projects

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- When resurfacing of a street alters the usability of a street, curb ramps within scope of the alteration project must be improved to the maximum extent feasible to meet ADAAG standards (including detectable warnings) at the same time that the project occurs.



## Access Board Draft Guidance

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Recommended source for reasonable policies on issues not governed by ADAAG standards.

Notice of Availability (Nov. 23, 2005):

<http://www.access-board.gov/prowac/noa.htm>

PROW Draft Guidelines:

<http://www.access-board.gov/prowac/draft.htm#304>

# ADA Design Resources

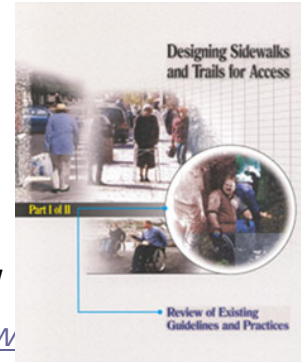
- *Draft Guidelines for Accessible Public Rights-of-Way (PROWAG)*

[www.access-board.gov/rowdraft.htm](http://www.access-board.gov/rowdraft.htm)

- *Designing Sidewalks and Trails for Access: Parts I and II*

<http://www.fhwa.dot.gov/environment/sidewalk>

<http://www.fhwa.dot.gov/environment/sidewalk2/>



A. General Requirements (Subpart A and B):	Yes	No	?
1. Does the LPA have a 504/ADA coordinator? (28 CFR 35.107(a) & 49 CFR 27.13 (a))			
2. Does the LPA have an internal grievance procedure that allows for quick and prompt solutions for any complaints based on alleged noncompliance with 504/ADA? (28 CFR 35.107(b) & 49 CFR 27.13(b))			



3. Does the LPA keep on file for at least one year all complaints of noncompliance with ADA and 504 received? (49 CFR 27.121(b))	Yes	No	?
4. Has the LPA drafted and disseminated to participants, applicants, employees, unions and contractors/consultants a non-discrimination policy statement that states that the STA does not discriminate on the basis of disability in admission or access to, or treatment or employment in its programs or activities? (28 CFR 35.106 & 49 CRF 27.15)			

5. Does the non-discrimination policy statement also identify the name, title, office address and office telephone number of the 504/ADA Coordinator? (28 CFR 35.107(a) & 49 CFR 27.15 (a) and (b))	Yes	No	?
6. Has the LPA conducted a self-evaluation of its current services, policies, and practices, and the effects thereof, to determine necessary modifications to achieve program accessibility? 28 CFR 35.105 & 49 CFR 27.11(c)(2)(i-v))			

7. If so, did the LPA 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? (28 CFR 35.105(b) & 49 CFR 27.11(c)(2))	Yes	No	?
8. Has the recipient established a system for periodically reviewing and updating the evaluation?			
9. Does the LPA maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities? (28 CFR 35.133)			

10. Does the STA monitor sub-recipients who receive STA assistance (local governments, contractors, consultants) to ensure compliance with Title II ADA and 504 with respect to STA-funded (both Federal and State \$\$) projects and programs that the sub-recipients implement? (28 CFR 35.130(b)(1)(v) & 49 CFR 27.7 (V))	Yes	No	?
11. Does the LPA provide a written assurance to the STA that it will not discriminate on the basis of disability in the provision of its programs, services, activities, and facilities, and that it will be in compliance with Section 504 and all of its requirements? (49 CFR 27.9)			

B. Program and Facility Accessibility (Subpart D)	Yes	No	?
Title II ADA Transition Plan requirements			
1. Has the LPA developed and implemented a transition plan that outlines which structural modifications must be made to those programs and services that are not accessible? (28 CFR 35.150(d) & 49 CFR 27.11)			
2. Has the LPA also developed a curb ramp installation schedule as part of the transition plan for pedestrian facilities it owns, operates and/or maintains? (28 CFR 35.150(d)(2))			

3. If so, did the LPA provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the transition plan process by submitting comments? (28 CFR 35.150(d)(1) & 49 CFR 27.11(c)(2))	Yes	No	?
4. Is the transition plan available for public inspection? (28 CFR 35.150(d)(1) & 49 CFR 27.11)			
5. Has the LPA modified any policies or practices that do not meet Section 504 according to a schedule or sequence that includes milestones or measures of achievement? (49 CFR 27.11(c)(2)(iii))			

6. Has the LPA taken appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices? (49 CFR 27.11 (c)(2)(iv))	Yes	No	?
7. Does the LPA have a process to analyze a project, program, service or benefit for determinations of “undue” financial or administrative burdens, or fundamental alteration to the program, service or benefit that comports with the criteria for making such determinations in 28 CFR 35.150 (a)(3) and 28 CFR 35.107(a) & 49 CFR 27.13 (a))			

8. Does the LPA build new facilities and alter existing ones (both pedestrian ROW and STA buildings) in accordance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Appendix A of 49 CFR 37? (28 CFR 350151 (c) and 49 CFR 27.3 (b))	Yes	No	?
9. Does the LPA have a process and procedure for the installation of accessible features on the pedestrian rights-of-way (curb ramps, accessible pedestrian signals, etc.)?			

10. Does the LPA provide accessible highway rest areas and pedestrian underpasses, overpasses and ramps that are newly constructed or altered with Federal aid? (49 CFR 27.75)	Yes	No	?
11. Does the LPA have a process for making technical infeasibility determinations for new construction and alterations that comports with the criteria in ADAAG 4.1.1 (5) and 4.1.6(J)?			
12. Does the LPA have a process to provide access to programs, services and benefits to those with disabilities that comports with 28 CFR 35.150 (b)(1)?			

13. Does the LPA install curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, when streets, roads, highways or crosswalks are newly constructed or altered, or when the crosswalk is constructed with Federal aid? (28 CFR 35.151 (e)(1)(2) and 49 CFR 27.75 (a)(2))	Yes	No	?
14. Is the LPA installing detectable warnings in the form of truncated domes in curb ramps when roadways with pedestrian facilities are altered? (ADAAG 4.29 and FHWA policy guidance (May 2002))			

C. Communications (Subpart E)	Yes	No	?
1. Does the LPA provide auxiliary aids (sign language interpreters, readers, Braille, large print text upon request, to STA program participants with disabilities? (28 CFR 35.160 (b)(1) and 49 CFR 27.7(c))			
2. Does the LPA notify the public and other interested parties that auxiliary aids will be provided, upon request (e.g., via public meeting announcement)? (28 CFR 35.160 (a), 28 CFR 35.163 (a), and 49 CFR 27.7(c))			

3. Is the LPA website and all of its contents accessible to individuals with hearing or visual impairments? (28 CFR 35.160 (a), 28 CFR 35.163 (a) and 49 CFR 27.7(c))	Yes	No	?
4. Are LPA hotlines and other telephone services (511, traffic information) accessible by TTD/TTY phone services? Can hearing impaired individuals contact the STA via TTD/TTY phone line? (28 CFR 35.161 and 49 CFR 27.7(c))			