

## Americans with Disability Act - Title II Public Entity Facilities Compliance Timetable

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7-26-1990	Signing of the Americans with Disabilities Act of 1990 by President George Bush.
2-28-1991	Draft Regulations issued by the Department of Justice for implementing Title II.
4-29-1991	Final comments on draft regulations due at DOJ.
7-26-1991	Final regulations for implementing Title II published by the Department of Justice.
<b>1-26-1992</b>	<b>Effective Date of Title II.</b>  1.) Ensure that the operation of each service, program and activity is operating so that each, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. (35.150(a))  Even though the following required procedures will not shield a public entity from a discrimination complaint, they are mandatory if programs are not readily accessible to and usable by people with disabilities:  A. Begin self-evaluation process for those areas of services, policies and practices not previously evaluated (and on file) for section 504 of the Rehabilitation Act of 1973. (35.105)  B. Begin transition plan outlining structural changes required for program accessibility and proceed with structural changes, as required, to facilities "as expeditiously as possible". (35.150(c))  2.) New construction advertised for bid after this date must be readily accessible. (35.151(a))  3.) The altered portions of alterations advertised for bid after this date must, to the maximum extent feasible, meet the "readily accessible to and usable by individuals with disabilities" standard set by the Uniform Federal Accessibility Standard or, at the public entity's option, the ADAAG. (35.151(b)).  4.) Date a complaint or civil law suit may be filed by an individual based on ADA discrimination by a public entity.
7-26-1992	Transition plan complete where structural changes to facilities will be undertaken to provide program access. Transition plan must identify obstacles, describe in detail the methods that will be used to make facilities accessible, specify the schedule for taking the steps identified and indicate the official responsible for implementation of the plan. (35.150(d))
1-26-1993	Self-evaluation complete. (35.105(a))
1-26-1995	Completion of last structural changes to facilities where such changes were undertaken for program accessibility. (35.150(c))

*This is not legal advice. A competent lawyer should be consulted regarding any specific legal questions. Information presented above was taken from DOJ Regulation (28CFR Part 35) on Title II of ADA.*

# Americans with Disability Act - Title II

## Public Entity Facilities Compliance Fact Sheet

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### **General Rule:**

No qualified individual with a disability shall be discriminated against or excluded from participation in or the benefits of the services, programs, or activities of a public entity.

### **Program Accessibility:**

No qualified individual with a disability shall, because of inaccessible or unusable facilities of a public entity, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity or be subject to discrimination by any public entity.

### **Limitations:**

It is not required that a public entity take any action that it can demonstrate would constitute a fundamental alteration in the nature of the service, program or activity, or would cause an undue administrative or financial burden. Regardless of that, a public entity is required to take any other action that would not trigger this limitation and ensure program accessibility.

### **Existing Facilities:**

A public entity is required to make structural changes to existing facilities only when program accessibility is not feasible any other way (i.e.: reassignment of services to accessible building, or provision of auxiliary aids.)

Although unable to protect a public entity from complaint or civil suit if programs were not readily accessible to and usable by persons with disabilities by Jan. 26, 1992, each public entity in the U.S. is required to complete a "self-evaluation" of its current policies and practices to identify any non-compliant policies or practices.

Where "structural changes" to existing facilities are the only way to arrive at program accessibility, a "transition plan" (only required for public entities with 50 employees or more) outlining the steps necessary to complete the structural changes is required. Comments must be invited from disabled persons or organizations representing such individuals. The "transition plan" must have been completed by July 26, 1992 and must include the identification of barriers (architectural and communication) to program accessibility, detailed methods for making the facilities accessible, a schedule for implementation and the official responsible for implementation.

### **New Construction:**

All new facilities constructed by, on behalf of or for the use of a public entity shall be designed and constructed to be readily accessible to and usable by persons with disabilities if construction was started or if the invitation for bids went out after Jan. 26, 1992. The elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply to facilities constructed by, on behalf of, or for the use of a public entity or entities.

### **Alterations:**

Alterations to facilities of a public entity must also meet the "readily accessible" standard, to the maximum extent feasible. Path of travel requirements also apply.

### **Effective Date:**

The effective date of this Title was Jan. 26, 1992.

### **Regulation and Standards:**

The Department of Justice issued regulations on July 26, 1991 for all portions of Title II except those portions dealing with Public Transportation which were issued by the Department of Transportation.

The regulations associated with Title II of the Act and printed in the Federal Register on July 26, 1991 state that compliance with the Uniform Federal Accessibility Standards (UFAS) of the ADAAG (without the elevator exemption) shall satisfy the accessibility requirements of this Title for new and altered buildings and facilities. This publication also states that "departures from particular requirements of those standards by use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided."

Most facilities constructed or altered with Federal funds are presently required to comply with UFAS under the Architectural Barriers Act of 1968. Facilities constructed or altered by recipients of Federal financial assistance are presently required to comply with UFAS under Section 504 of the Rehabilitation Act of 1973.

### **Enforcement:**

Those who believe themselves discriminated against may file a civil lawsuit in Federal District Court.

Individuals may file complaints with the designated Federal agencies concerning matters of Title II discrimination or contact the Department of Justice who will direct the complaints as required. The Federal agency specified in the regulations will then investigate the complaint (if made within 180 days of the alleged discrimination), attempt to resolve complaints on a voluntary compliance basis and then, if unsuccessful, refer case to the Department of Justice for civil suit.

Remedies are the same as available under Section 505 of the Rehabilitation Act of 1973. Courts may order an entity to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorney's fees and expenses.

**Notes:** Unless stated otherwise, information presented above was taken from Title II regulations published by the DOJ in the Federal Register July 26, 1991.

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