

INSTRUCTIONAL MEMORANDUMS

To Local Public Agencies



To: Counties and Cities	Date: October 1, 2013
From: Local Systems Bureau	I.M. No. 1.080
Subject: ADA Requirements	

Contents: This Instructional Memorandum (I.M.) provides guidance for a Local Public Agency (LPA) to understand and comply with the requirements of [Americans with Disabilities Act of 1990 \(ADA\)](#), [Section 504 of the Rehabilitation Act of 1973](#) (Section 504), and the regulations associated with these laws, as they apply to pedestrian facilities. This I.M. also includes the following attachment:

[Attachment A](#) – Sample Pedestrian Access Route Transition Plan ([Word](#))

Introduction

The accessibility requirements of the ADA and Section 504 apply to many different aspects of an LPA's programs, services, and facilities. However, because the I.M.s are written for transportation-related projects, this I.M. will focus on how these requirements apply to pedestrian facilities in the public right-of-way and pedestrian facilities that are constructed or altered as part of a transportation project. Examples of such pedestrian facilities include streets, sidewalks, walkways, and shared use paths (i.e., facilities designed for both bicycles and pedestrians). For accessibility guidance related to other programs, services, or facilities refer to the Additional Resources section at the end of this I.M.

Applicable Laws and Regulations

Title II of the ADA and its associated regulations (28 CFR 35) prohibit discrimination on the basis of disability in State and local government services, programs, and activities, regardless of whether the agency is a recipient of Federal-aid or not. Providing streets, sidewalks, and shared use paths are considered a program; therefore, all LPA projects involving these facilities are subject to the requirements of the ADA.

Section 504 (now codified at 29 U.S.C. 794) and its associated regulations (49 CFR 27) also prohibit discrimination on the basis of disability. However, Section 504 applies specifically to those programs, projects, and activities that receive Federal Financial assistance. This means LPAs that receive Federal-aid through the Iowa Department of Transportation (Iowa DOT) must comply with the Section 504 requirements.

Accessibility Standards and Guidelines

Under the ADA regulations (28 CFR 35.190) the United States Department of Transportation (US DOT) has been designated by the United States Department of Justice (DOJ) as the Federal agency responsible for overseeing and implementing ADA compliance for services, programs, and activities relating to transportation, including highways and public transportation. The FHWA, an agency within the US DOT, is responsible for the implementation of pedestrian access requirements from the ADA and the Rehabilitation Act.

The standards used to determine whether facilities comply with the ADA and the Section 504 regulations are based on guidelines developed by the [United States Access Board](#) (Access Board). After these guidelines are developed, they are usually adopted by means of the Federal rule-making process, either in whole or in part, by the DOJ and the US DOT. After the Access Board guidelines are adopted, they become the legally enforceable accessibility standard. The US DOT adopted the [2010 ADA Standards for Accessible Design](#) (ADAAG) as the standard for ADA compliance.

However, ADAAG does not address many of the design considerations associated with construction or alterations to pedestrian facilities in the public right-of-way. In response, the Access Board developed the [2011 Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way](#) (PROWAG). These guidelines have not yet been adopted by the US DOT as the legally enforceable standard. However, they are recommended for use by FHWA as the current best practice of accessible design, and in the future, they will likely become the accessibility standard for pedestrian facilities in the public right-of-way. Therefore, SUDAS and the Iowa DOT jointly developed Chapter 12A of the Iowa DOT [Design Manual](#) based on the [2011 PROWAG](#). Chapter 12A was also developed in accordance with Federal regulations (23 CFR 652 and 28 CFR 35) and is the standard for use by all

governmental entities in the State of Iowa. A local jurisdiction may elect to produce their own standards; however, these will require review and approval by FHWA and/or the DOJ.

Accessibility Requirements

New Construction and Alterations

All new construction and alteration projects shall follow the requirements set forth in Chapter 12A for sidewalks and Chapter 12B for Bicycle Facilities of the Iowa DOT [Design Manual](#).

Accessibility improvements that are outside the scope of the alteration project may be deferred to a later date. For more information, refer to the discussion of transition plans below.

Maintenance Activities

Routine maintenance activities are not considered an alteration, and therefore do not require simultaneous accessibility improvements to pedestrian facilities. Maintenance activities are actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the facility.

Maintenance of Pedestrian Facilities

Where pedestrian facilities are provided, they must be maintained so that they are readily accessible and useable by persons with disabilities. Therefore, the LPA should adopt policies that ensure sidewalks and other pedestrian facilities will be properly maintained and free of obstructions. Examples of obstructions include: street furniture, utility poles, tree roots, potted plants, snow or ice, debris, or inoperable elevators and lifts. Temporary obstructions and isolated instances of failures would not necessarily be considered a violation of the ADA or Section 504; however, if these situations are prolonged, they may become a violation.

Documenting Exceptions

If an LPA receives any type of funding assistance from the Iowa DOT or the project is let through the Iowa DOT; and if an LPA determines that a pedestrian facility cannot be made fully compliant because the accessibility improvements are structurally impracticable, technically infeasible, or there are safety issues, as defined in Section 12A-2 of the Design Manual, it shall provide the Iowa DOT Administering Bureau with an Accessibility Exceptions Certification ([Form 517118](#)). The certification shall include supporting documentation that identifies the specific locations and lists the specific reasons why full compliance cannot be achieved. The certification shall be prepared and signed by a registered Professional Engineer or Landscape Architect licensed in the State of Iowa. Whenever alterations are made to the pedestrian circulation path, the pedestrian access route shall be made accessible to the maximum extent feasible within the scope of the project. If full compliance with Chapter 12 of the Iowa DOT [Design Manual](#), is technically infeasible, compliance is required to the extent that is not technically infeasible.

For all other projects, the same type of documentation should be prepared and retained by the LPA.

Transition Plans

LPAs are required to operate their services, programs, or activities so that they are readily accessible to and usable by individuals with disabilities. The ADA regulations (28 CFR 35.150(d)) require LPAs with 50 or more employees to prepare a formal transition plan, if structural changes are required in order to make its programs, services, or activities accessible. Section 504 (49 CFR 27) requires LPAs, regardless of the number of employees, which receive Federal-aid through the Iowa DOT to prepare a formal transition plan, if structural changes are required in order to make its services, programs, or activities accessible. The ADA regulations (28 CFR 35.150(c)) required all structural changes to have been made by January 26, 1995, or as expeditiously as possible.

When required, the transition plan must address all services, programs, and activities owned or operated by the LPA. Because the scope of this I.M. is limited to transportation facilities, the following guidance has been tailored to specifically address curb ramps in the public right-of-way. If facilities other than curb ramps are found not to be in compliance, those facilities should also be included in the LPA's transition plan.

The ADA regulations (28 CFR 35.150(d)), require the transition plan to address each of the numbered items below. The bullet points underneath each numbered item provide guidance in complying with the requirements.

1. Identify physical obstacles in the public entity's facilities that limit the accessibility of its services, programs, or activities to individuals with disabilities. Also identify the specific standards used to determine technical compliance with regard to the inventory/survey of curb ramps, sidewalks, and other facilities.
 - This should include an inventory of all locations where structural changes are needed to make facilities accessible. The inventory should also identify the types of improvements required to provide accessibility for curb ramps, intersections, and sidewalks.
 - The inventory of facilities to be modified shall be prioritized in the following order:
 - a) State and local government offices and facilities (e.g., city hall, schools, etc.)
 - b) Places where government services and transit facilities are provided (e.g., bus stops, train stations, etc.)
 - c) Places where the public is accommodated (e.g., employers, shops, etc.)
 - d) All other areas (e.g., residential or other)
2. Describe in detail the methods that will be used to make the facilities accessible.
 - This should include a description of the funding sources and amounts that will be annually budgeted for making the improvements associated with the transition plan.
 - This should also describe how accessibility improvements will be incorporated as a part of other projects involving construction or alterations to pedestrian facilities.
3. Specify the schedule for taking the steps necessary to achieve compliance 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.
 - The schedule should include milestones that can be used to evaluate progress towards completion. For curb ramps, this should include the number of ramps that will be constructed each year, and the total number of years required to complete the plan.
4. Indicate the official responsible for implementation of the plan.
 - This should include the name, title, office address, phone number, and e-mail address of the LPA official responsible for the coordination, development, and implementation of the transition plan.
5. The ADA regulations also require the LPA to provide an opportunity for interested persons, individuals with disabilities, or organizations representing individuals with disabilities, to actively participate in the development of the transition plan by submitting comments. LPA shall conduct and document outreach to solicit comment concerning its self-evaluation and transition plan. This should include a description of how the public was involved in reviewing and / or developing the transition plan. This should include the names of advisory committees, task forces, or other groups representing persons with disabilities that were provided an opportunity to comment.

In addition, a copy of the transition plan shall be made available for public inspection.

The Iowa DOT has observed that many LPAs have a transition plan, but sometimes their transition plans do not address the accessibility improvements required in the public right-of-way; specifically, curb ramps. In order to provide assistance to LPAs that need to modify or update their transition plan to include curb ramps, the Iowa DOT has developed a Sample Pedestrian Access Route Transition Plan*, as shown in [Attachment A \(Word\)](#). If used, the LPA should complete the information indicated by the yellow, bracketed text and make other modifications as appropriate.

*Disclaimer: Even though the Sample Curb Ramp Transition Plan has been reviewed by the Iowa DOT and the FHWA Iowa Division, neither the Iowa DOT nor the FHWA can guarantee this sample will be sufficient for every situation. This document is provided as a guide only and additional modifications may be necessary.

Other requirements recommended to be included in the Transition Plan

Self-Evaluation

All LPAs must perform a self-evaluation. An LPA self-evaluation should include a comprehensive review of its policies, services, communications, and practices, as well as an analysis of how they affect persons with disabilities. The purpose of the self-evaluation is to identify any policies and practices that do not comply with the ADA and Section 504 requirements and modify those policies and practices to bring them into compliance. The ADA regulations also require the LPA to provide an opportunity for interested persons, individuals with disabilities, or organizations representing individuals with disabilities, to participate in the development of the self-evaluation and comments received during the development. LPAs that are recipients of Federal-aid from the Iowa DOT are required to maintain the self-evaluation on file and make it available for public inspection. Establish a system for periodically reviewing and updating the self-evaluation.

Complaint Procedures

All LPAs with 50 or more employees and all LPAs with 15 or more employees that receive Federal-aid through the Iowa DOT must develop, adopt, and publish grievance or complaint procedures. These procedures should provide for a prompt and equitable resolution of complaints that allege violation of the ADA and Section 504 regulations. LPAs should make all possible efforts to resolve complaints on the local level. The LPA must maintain a database of its ADA and Section 504 complaints. Complaint records must be retained for 5 years after the complaint is resolved. The database should denote the following: Complainant, Respondent, allegations, issue, date the complaint was received, date the complaint was resolved, and how the complaint was resolved.

ADA and Section 504 Coordinator

All LPAs with 50 or more employees and all LPAs, regardless of the number of employees, which receive Federal-aid through the Iowa DOT, are required to designate at least one employee as the ADA and Section 504 Coordinator to coordinate compliance with ADA and Section 504 regulations. The LPA shall make available to all interested parties the name, title, office address, phone number, and e-mail address of the ADA and Section 504 Coordinator.

Public Notice

The ADA and Section 504 regulations also require the LPA to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of their rights and protections under these regulations. The LPA should have a Notice of Non-Discrimination, which informs the public that the LPA will not discriminate on the basis of disability in its services, programs, and activities with ADA and Section 504.

There are a number of other requirements associated with the ADA and Section 504. This I.M. has only addressed a few of them. For more comprehensive guidance, refer to the Additional Resources listed below. To assist LPAs, the Iowa DOT has developed checklists, and sample documents for use by the LPA. To access these documents, refer to the Iowa DOT [Civil Rights Subrecipients](#) webpage or the [ADA Transition Plan](#) webpage.

Additional Resources

[U.S. Access Board](#) Homepage of the Access Board. Provides a variety of guidelines and resources related to accessible design.

[Public Rights-of-Way Homepage](#) An Access Board web page that provides information focused to their public rights-of-way guidelines, including the rule making history, current public rights-of-way guidelines, and other resources.

[FHWA Office of Civil Rights](#) Home page for the FHWA Office of Civil Rights. Provides a variety of information related nondiscrimination laws and regulations, including Title II of the ADA and Section 504.

[Questions and Answers About ADA/Section 504](#) FHWA Office of Civil Rights' guidance concerning implementation of the ADA and Section 504 requirements.

[U.S. DOJ ADA](#) Homepage of the U.S. DOJ. Provides Information and Technical Assistance on ADA. There are guides for State and local governments.

[US DOT FHWA Accessibility Resource Library](#)

[Department of Justice/Department of Transportation Joint Technical Assistance¹ on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing](#)

[Glossary of Terms for DOJ/FHWA Joint Technical Assistance on the ADA Title II Requirements to Provide Curb Ramps When Streets Roads or Highways are Altered Through Resurfacing](#)