

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

The Americans with Disabilities Act and Section 504

February 2011

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.

Appendix: An “attachment” to a regulation or guideline. It can be binding or just informative. DOJ’s 1991 title III regulation has an Appendix A, the “ADA Standards” (see below), which generally apply to construction and alterations before March 15, 2012. DOJ’s 2010 title III regulation’s Appendix A is supplementary information, or the “preamble” to the final rule; it discusses the comments received on the proposed rule and sets out a section-by-section analysis of the final rule. The 2010 regulation also has an Appendix B, which is analysis and commentary on the 2010 Standards.

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.

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.

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- DOJ's standards: These are the ADA accessibility standards (also **ADA Standards for Accessible Design**). Until September 15, 2010, they had to be followed for title III new construction and alterations. Title II entities could choose between these and UFAS. Between that date and March 15, 2012, public and private entities can choose to follow the 2010 Standards. Starting March 15, 2012, all covered entities must follow the 2010 ADA Standards.
- 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 2010 DOJ adopted new standards for title II and title III that include new ADAAG, as well as provisions added by DOJ.

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 1993 guidelines were adopted by DOJ as Standards in 1994. The 1998, 2000, and 2002 ADAAG were adopted by DOJ as ADA Standards in 2010.

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 1991 Or 2010 ADA Standards until March 15, 2012; then it must follow the 2010 Standards.