

Equal Access to Public Accommodations*

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EDITOR'S NOTE

Lack of access to the daily commerce of public life has promoted the persistent social isolation of persons with disabilities. The guarantee of access to public accommodations is an historical cornerstone of civil-rights law that now extends to persons with disabilities. The provision of accessible public accommodations can draw on the wealth and breadth of experience to date, experience that Robert L. Burgdorf Jr. describes as extending from restaurants and hotels to national parks and fishing piers. With the development of an accessible society posing particular challenges to small businesses, the law has been crafted to be flexible and to accommodate the particular needs of small businesses.

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Nearly three decades ago, four black students sat down at a lunch counter at a Woolworth's store in Greensboro, North Carolina, ordered a cup of coffee, and refused to move until they were served.¹ Unknown to the four young men at the time, their act of courage would help precipitate a series of sit-in protests and other forms of civil disobedience challenging racial segregation at lunch counters, restaurants, parks, hotels, motels, and other facilities. The segregation of such places was a principal target of civil-rights protests, lawsuits, and proposals for legislative reform during the early sixties.

Equal opportunity to use and obtain the benefits of places of public accommodation is a long-cherished right in American law. In the *Civil Rights Cases*,² decided in 1883, the Court posited without deciding that "a right to enjoy equal accommodation and privileges in all inns, public conveyances, and places of public amusement, is one of the essential rights of the citizen . . ." In 1964, in his separate opinion in *Bell v. Maryland*,³ Justice Douglas stated that "the right to be served in places of public accommodations is an incident of national citizenship."⁴ In another opinion in that case, Justice Goldberg declared his belief that all Americans are guaranteed "the right to be treated as equal members of the community with respect to public accommodations."⁵ In the view of both Justice Douglas and Justice Goldberg, access to public accommodations should be legally protected as a "civil right."⁶ Their characterization was endorsed by the enactment of the Civil Rights Act of 1964, title II of which prohibits discrimination based upon race, color, religion, or national origin in "places of public accommodation."⁷

For individuals with disabilities, title III of the Americans with Disabilities Act (ADA) of 1990 provides an analogous, but broader, prohibition of discrimination by public accommodations. Justice Goldberg's concept of a right of equal membership in the community is the foun-

dational premise that undergirds the public accommodations provisions of the ADA. This article traces the purposes and origins of the public accommodations provisions of the ADA, outlines the major legal concepts and legislative background of these provisions, and examines relevant experiences to date in providing accessible public accommodations.

EXTENT AND IMPACT OF DISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS

In the first nationwide poll of people with disabilities conducted in 1986, the Louis Harris organization asked a number of questions regarding the social integration and activities of Americans with disabilities (Louis Harris and Associates 1986). The pollsters discovered that people with disabilities are an extremely isolated segment of the population.

Specific findings of the poll included the following:

- Nearly two-thirds of all disabled Americans never went to a movie in the past year.
- Three-fourths of all disabled persons did not see live theater or a live music performance in the past year.
- Two-thirds of all disabled persons never went to a sports event in the past year, compared with 50 percent of all adults.
- Disabled people are three times more likely than are nondisabled people never to eat in restaurants. Seventeen percent of disabled people never eat in restaurants, compared with 5 percent of nondisabled people. (Louis Harris and Associates 1986, 3)

Why do people with disabilities not frequent places of public accommodation and stores as often as other Americans? The Harris poll shed some light on the reasons for this isolation and nonparticipation by persons with disabilities in the ordinary activities of life.

The preeminent reason why people with disabilities do not participate in various aspects of commercial, social, and recreational activities that are a routine part of ordinary life for most other Americans is that they do not feel welcome and able to participate safely. In the Harris

poll, 59 percent of persons with disabilities reported fear as a reason for nonparticipation and 40 percent reported self-consciousness (1986, 63–64). To a disturbing degree, people with disabilities do not feel safe or welcome to attend or visit ordinary places open to the public for socializing, doing business, or engaging in recreation and other major activities in our society.

In addition, physical barriers prevent people with disabilities from visiting social, commercial, and recreational establishments. Many people with mobility impairments, particularly those who use wheelchairs, cannot enter or use a facility that has steps, narrow doorways, inaccessible bathrooms, and other architectural barriers. People having visual and hearing impairments are often unable to make effective use of or to participate safely in activities and services if the facility in which they occur has included no features for communication accessibility. According to the Harris poll, 40 percent of individuals with disabilities reporting curtailments of their activities said that an important limitation is inaccessibility of buildings and restrooms (Louis Harris and Associates 1986, 64).

People with various disabilities are turned away from public accommodations because proprietors say that their presence will disturb or upset other customers. During Senate committee hearings on the ADA legislation in 1989, Lisa Carl, a 21-year-old woman with cerebral palsy, gave dramatic testimony about her exclusion from a local movie theater in Tacoma, Washington, by a manager who simply refused to allow her to enter due to her disability.⁸ (President Bush made an explicit reference to Lisa in his remarks at the ADA signing ceremony.)⁹ At the height of civil-rights confrontations in the early 1960s, entrenched authorities closed some parks and zoos rather than permit them to be integrated. Nearly 30 years later, people with disabilities were still having trouble gaining admission to many such establishments. In 1988, the *Washington Post* reported that a New Jersey zookeeper refused children with Down syndrome admission to his zoo because he was afraid they would upset his chimpanzees (Shapiro 1988).

SCOPE OF PUBLIC ACCOMMODATIONS COVERED BY THE ADA

Title II of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, or national origin in places of public accommodation, defines the phrase "place of public accommodation" to include a range of establishments that had generated serious problems of segregation.¹⁰ These include inns, hotels, motels, and other lodging establishments; restaurants, cafeterias, lunch rooms, lunch counters, soda fountains, and other facilities selling food for consumption on the premises; gasoline stations; and motion-picture houses, theaters, concert halls, sports arenas, stadiums, and other places of exhibition or entertainment. Since 1964 it has been illegal for any of these establishments to discriminate on the basis of race, color, religion, or national origin. Under the ADA, it is now unlawful for these same establishments to exclude, segregate, or otherwise discriminate against people because of their disabilities.

The ADA, however, goes beyond the 1964 Civil Rights Act list of public accommodations, and takes a much broader view of the concept. Title III of the ADA establishes the following 12 categories of entities that constitute public accommodations:

1. Places of lodging—inns, hotels, motels
2. Establishments serving food or drink—restaurants, bars
3. Places of exhibition or entertainment—motion picture houses, theaters, concert halls, stadiums
4. Places of public gathering—auditoriums, convention centers, lecture halls
5. Sales or rental establishments—bakeries, grocery stores, clothing stores, hardware stores, shopping centers
6. Service establishments—laundromats, dry-cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, offices of accountants or lawyers, pharmacies, insurance offices, professional offices of health care providers, hospitals
7. Transportation stations—terminals, depots
8. Places of public display or collection—museums, libraries, galleries
9. Places of recreation—parks, zoos, amusement parks
10. Places of education—nursery schools, elementary schools,

secondary schools, undergraduate schools, postgraduate schools

11. Social service establishments—day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies
12. Places of exercise or recreation—gymnasiums, health spas, bowling alleys, golf courses¹¹

This list of covered entities is obviously much more comprehensive than the formulation in title II of the Civil Rights Act of 1964. With the exception of sales or rentals of residential housing, the 12 categories include almost every type of operation that is open to business or contact with the general public.

Although the definition of public accommodations in the ADA is broad, it applies only to private entities.¹² Buildings owned by state and local governments are not within the definition of public accommodation, but most will be covered by the “public service” provisions in title II of the ADA. Specifically exempted from the coverage of this title of the Act are private clubs, religious organizations, and entities controlled by religious organizations.¹³ The exemption for private clubs is accomplished through a cross-reference to the exemption for private clubs or establishments in title II of the Civil Rights Act of 1964.¹⁴ The exemption for religious organizations was prompted by a Bush administration conviction that such an exception from statutory coverage was necessary to protect the free exercise of religion—a concern that the legislation should “avoid potential confrontation with the First Amendment to the Constitution that might arise with the coverage of religious institutions.”¹⁵ Private homes, apartments, condominiums, cooperatives, and other private housing facilities and residences are also not included in the concept of public accommodations.¹⁶

In addition to public accommodations, the requirements regarding accessibility of new construction and alterations in title III apply to all “commercial facilities.”¹⁷ The definition of “commercial facilities” encompasses facilities “(A) that are intended for nonresidential use; and (B) whose operations will affect commerce.”¹⁸ The concept of “affecting commerce” has been interpreted extremely broadly in American jurisprudence.¹⁹ The ADA definition does not circumscribe this expansive formulation, but only adds that it does not apply to residential uses; the result is an extraordinarily broad definition of “commercial facilities.”

ADA REQUIREMENTS RE PUBLIC ACCOMMODATIONS

The substantive requirements of title III establish a paramount, broad “general rule” proscribing discrimination “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.”²⁰ Subsequent provisions outline various more specific requirements that the general prohibition entails. Public accommodations are prohibited from subjecting, by direct or indirect means, an individual or class of individuals with disabilities to any of the following forms of discrimination:

1. Denying participation in or benefit from an opportunity
2. Affording an opportunity that is not equal to that made available to other individuals
3. Providing an opportunity that is different or separate, unless such separation or difference is necessary to provide an individual with a disability an opportunity that is as effective as that provided to others
4. Providing opportunities that are not in “the most integrated setting appropriate to the needs of the individual”
5. Using standards or methods of administration, directly or through contractual arrangements, that have the effect of discriminating or that perpetuate the discrimination of others who are subject to common administrative control
6. Excluding or denying an individual equal treatment because of that person’s association or relationship with a person who has a disability²¹

Title III also establishes what are termed “specific prohibitions”²² that delineate five major elements of the prohibition of discrimination on the basis of disability:

1. *Discriminatory Eligibility Criteria.* Places of public accommodation are prohibited from imposing or applying “eligibility criteria that screen out or tend to screen out” individuals or classes of individuals with disabilities, unless these criteria “can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.”²³ The “necessary” test is similar to the stringent “business necessity” and “job-related” standards ADA imposes on tests and selection criteria in the employment context.²⁴

2. *Reasonable Modifications.* Public accommodations are required to make "reasonable modifications to policies, practices, or procedures," to permit an individual with a disability opportunity to obtain the goods, services, facilities, privileges, or accommodations being offered; a business is not required, however, to make modifications that it "can demonstrate . . . would fundamentally alter the nature of such goods, services, facilities, privileges, or accommodations."²⁵ Although the "reasonable modifications" requirement is generally equivalent to the "reasonable accommodation" requirement in employment,²⁶ the fundamental alteration limit imposes a much higher level of obligation upon a public accommodation than does the "undue hardship" limit upon employers. Consequently, although the objectives and nature of the modifications required as a "reasonable modification" or a "reasonable accommodation" are conceptually the same, the amount or degree of required change is substantially more for the public accommodation because its limiting standard is higher.

The fundamental alteration concept in the disability discrimination context derives from the Supreme Court's decision in *Southeastern Community College v. Davis*,²⁷ under section 504 of the Rehabilitation Act, in which the Court ruled that a university did not have to modify its clinical nursing program by converting it into a program of academic instruction in order to accommodate a woman with a hearing impairment. The Court declared that "[s]uch a fundamental alteration is far more than the 'modification' the regulation requires."²⁸ Lower courts have further outlined the dimensions of the "fundamental alteration" concept: accommodations are not mandated if they would endanger a program's viability;²⁹ "massive" changes are not required;³⁰ nor are modifications that would "jeopardize the effectiveness" of a program or would involve a "major restructuring" of an enterprise;³¹ and modifications that would so alter an enterprise as to create, in effect, a new program are not required.³² A colleague and I have elsewhere proposed the following definition of "fundamental alteration": "(1) a substantial change in the primary purpose or benefit of a program or activity; or (2) a substantial impairment of necessary or essential components required to achieve a program or activity's primary purpose or benefit."³³

3. *Auxiliary Aids and Services.* Covered entities must "take such steps as may be necessary" to assure that no person with a disability "is excluded, denied services, segregated, or otherwise treated differently . . . because of the absence of auxiliary aids or services."³⁴ "Auxiliary aids and services" are defined in the statute to include:

1. Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments
2. Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments
3. Acquisition or modification of equipment or devices
4. Other similar services and actions³⁵

A public accommodation is not required to provide such aids and services if it is able to demonstrate that doing so would "fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden."³⁶ Thus, the fundamental-alteration limit on provision of auxiliary aids and services is supplemented by an undue-burden limitation, a concept for public accommodations that is analogous to the undue-hardship limitation within the employment context.³⁷

4. Readily Achievable Barrier Removal in Existing Facilities. Public accommodations must remove "architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable."³⁸ "Readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense."³⁹ In determining whether an action is readily achievable, the ADA indicates some of the factors to be considered:

1. The nature and cost of the action needed under this Act
2. The overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility
3. The overall financial resources of the covered entity; the overall size of the business of the covered entity with respect to the number of its employees; the number, type, and location of its facilities
4. The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity⁴⁰

Inclusion of "geographic separateness" in the list of factors was a legislative compromise. Some business interests contended that consideration of resources should be limited to those of the particular facility and not of the parent company, arguing that readily achievable changes should not be permitted to justify changes that would make a particular facility at a particular location unprofitable and thus cause a company to close it. Disability rights advocates maintained that the full amount of resources available to a facility through a parent company should be controlling, arguing that more should be required of a large corporation with multiple sites than of a small, local, one-site operation. The final language provides that both the site-specific and parent-company resources are to be considered.⁴¹

The ADA committee reports list, as examples of barrier removal that would be readily achievable, "the addition of grab bars, the simple ramping of a few steps, the lowering of telephones, the addition of raised letter and braille markings on elevator control buttons, the addition of flashing alarm lights, and similar modest adjustments."⁴²

5. Alternative Methods. Where measures to remove barriers are not required because a public accommodation can demonstrate that they are not "readily achievable," the entity must still make its goods, services, facilities, privileges, advantages, or accommodations available through "alternative methods" if such methods are readily achievable.⁴³ Examples of "alternative methods" are provided in the committee reports: "coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater."⁴⁴

The requirements to remove barriers in existing facilities and to provide alternative methods where doing so is readily achievable applies to "communication barriers" as well as to "architectural barriers."⁴⁵ Thus, where structural changes to signage, loudspeaker systems, or visual displays in existing facilities to benefit people with visual, hearing, or cognitive impairments are not readily achievable (and are not otherwise required as an auxiliary aid), places of public accommodation may nonetheless be required to undertake readily achievable alternative actions such as providing a person to read information, to write down oral communications, or to escort an individual to the

location of goods, facilities, or programs that might otherwise be difficult or impossible for the individual to find.

In addition to the “general prohibition” and the “specific prohibitions,” title III also includes some particular provisions for new construction and alterations. Both newly constructed public-accommodation facilities and commercial facilities for first occupancy 30 months or more after the ADA’s enactment must be accessible, unless an entity can demonstrate that doing so is “structurally impracticable.”⁴⁶ “Structurally impracticable” is a very narrow exception applying primarily to buildings required to be built on stilts over water or marshes.⁴⁷ A small-building elevator exception is established as an exception to the Act’s accessibility requirements, and provides that an elevator is not required in facilities that are less than three stories high or have less than 3,000 square feet per story, unless the facility is a shopping center, shopping mall, office of a health-care provider, or some other type of facility in a category that the Attorney General determines, based upon its usage, requires the installation of elevators.⁴⁸

When public accommodations and commercial facilities are altered, the altered portions must be accessible.⁴⁹ If alterations are made to an area of a facility containing a primary function, the entity must provide an accessible path of travel to the altered area, and accessible bathrooms, telephones, and drinking fountains serving the altered area, unless doing so would be “disproportionate” to the overall cost and scope of the alterations.⁵⁰ The ADA gives the Attorney General the responsibility of establishing standards for the disproportionality criterion.⁵¹ House-committee ADA reports suggest that a level of 30 percent of the alteration costs would be an appropriate standard for distinguishing what is or is not disproportionate.⁵²

PRECEDENTS AND EXPERIENCES PROVIDING GUIDANCE FOR THE IMPLEMENTATION OF ADA PUBLIC ACCOMMODATIONS REQUIREMENTS

ACCESSIBILITY REQUIREMENTS

The ADA’s accessibility provisions make use of terms of art under prior statutes and federal regulations—facilities and vehicles must be made “readily accessible to and usable by” individuals with disabilities.⁵³

Under previous legislation and regulations, relatively specific standards and schematic drawings have been devised and issued to flesh out the application of the readily-accessible-to and usable-by standard.⁵⁴ The ADA committee reports provide guidance to the basic implications of the concept:

The term is intended to enable people with disabilities (including mobility, sensory, and cognitive impairments) to get to, enter and use a facility. While the term does not necessarily require the accessibility of every part of every area of a facility, the term contemplates a high degree of convenient accessibility, entailing accessibility of parking areas, accessible routes to and from the facility, accessible entrances, usable bathrooms and water fountains, accessibility of public and common use areas, and access to the goods, services, programs, facilities, accommodations and work areas available at the facility.⁵⁵

The ADA's legislative history provides some additional clarifications regarding the application of accessibility requirements in particular situations.⁵⁶ For example, the legislative history indicates that all newly constructed buildings must have an accessible ground floor, even if they are not mandated to have elevators pursuant to the previously noted exception for certain small buildings.⁵⁷

Another important concept for the ADA's coverage of places of public accommodation is the term "facility," which the Senate report indicates should be interpreted to refer to "all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located."⁵⁸ This is based upon the definition in section 504 regulations,⁵⁹ and similar definitions can be found in other sets of standards.⁶⁰ The definition applies to both indoor areas and all outdoor areas where human-constructed improvements or items have been added to the natural environment. It includes buildings and other erected structures, as well as equipment, apparatus, and parking lots, walkways, sidewalks, roadways, and passageways, plus the sites, areas, or settings in which such things are located.

The ADA authorizes the Attorney General to promulgate regulations for the implementation of title III.⁶¹ These regulations are to be consistent with minimum guidelines regarding accessibility to be issued

by the Architectural and Transportation Barriers Compliance Board (ATBCB).⁶² ATBCB has previously developed minimum guidelines for accessibility under the Architectural Barriers Act of 1968 and section 504 of the Rehabilitation Act of 1973—the Minimum Guidelines and Requirements for Accessible Design (MGRAD),⁶³ and these guidelines are to be supplemented and revised as necessary to develop minimum guidelines under the ADA.⁶⁴

On several occasions prior to the ADA, the federal government recognized that protecting people with disabilities from discrimination requires regulation of the built environment. In the Fair Housing Amendments Act of 1988, Congress directed the Secretary of HUD to encourage but not require state and local governments to issue accessibility requirements consistent with the minimum access requirements set out in the Act.⁶⁵ The approach through encouragement in the Fair Housing legislation provided a useful model for the ADA. The ADA pursued this approach further by authorizing states and local governments to apply voluntarily to the Attorney General for certification that a state law, local building code, or similar ordinance meets or exceeds the minimum requirements of the Act for accessibility.⁶⁶

The voluntary certification process notwithstanding, the ADA does not establish any direct mandate for including its minimum accessibility standards in state and local building codes and ordinances. As a practical matter, however, because entities that fail to comply with the minimum accessibility requirements of ADA may be subject to legal liability under the ADA, state and local regulatory agencies will probably begin to make their requirements consistent with the accessibility provisions of the ADA. State and local governments can continue to select and/or develop their own codes, but they will probably not want their standards to fall below the minimum guidelines established by the ADA.

Ready Achievability. Under the ADA, existing facilities are only required to make structural changes that are “readily achievable,” a phrase that is defined to mean “easily accomplishable and able to be carried out without much difficulty or expense.”⁶⁷ As discussed above, the Act establishes a list of factors to be considered in determining whether a particular change is readily achievable by a particular business. This requires physical access that can be achieved without extensive restructuring or burdensome expense. For example, a public accommodation that has one or two steps may be required to install a simple ramp. A public accommodation would generally not be

required to provide access if there is a flight of steps that would require extensive ramping or an elevator. The agency or business would still have to take other "readily achievable" steps to provide program access. For example, a real-estate agency doing business with the general public at a three-story walk-up office would not be required to install an elevator to provide access to the upper floors. The agency would be required, however, to install a simple ramp over a few steps to its entrance, in order to provide its services to customers with mobility impairments in the first-floor accessible offices, and to add glue-on, raised-letter, and braille markings to its elevator panels (if there are elevators) and floor numbers.

Topological Problems. The ADA recognizes that sometimes accessibility poses topological problems by allowing for exceptional cases where access would be impracticable or infeasible. Thus, the ADA does not require full accessibility when (1) in the case of new facilities, access would be "structurally impracticable;" or (2) in the case of altered facilities, access would be beyond the "maximum extent feasible." Such limitations will apply only in rare and unusual circumstances where unique characteristics of terrain make full accessibility unusually difficult. Such limitations for topological problems are analogous to an acknowledged limitation in the application of the accessibility requirements of the Fair Housing Amendments Act of 1988. In the House Committee Report accompanying the Housing Act, the House Committee on the Judiciary noted:

Certain natural terrain may pose unique building problems. For example, in areas which flood frequently, such as waterfronts or marshlands, housing may traditionally be built on stilts. The Committee does not intend to require that the accessibility requirements of this Act override the need to protect the physical integrity of multifamily housing that may be built on such sites.⁶⁸

Likewise, provisions in the existing Uniform Federal Accessibility Standards contain special requirements for alterations in cases where meeting the general standards would be impracticable or infeasible.⁶⁹

Delineation of the narrow circumstances in which such topological limitations can be invoked in the context of public accommodations will occur in regulations implementing the Act. In such circumstances, a place of public accommodation will not be required to exceed these

limits in order to achieve full accessibility. Such an entity will, however, be required to take less extensive steps in order to achieve accessibility. Even where full architectural accessibility is not mandated, there is still a requirement of "alternative methods," such as arranging for services or goods to be delivered at a portion of a facility that *is* accessible.

ENVIRONMENTAL IMPACT OF ACCESSIBILITY

The limitations on accessibility requirements minimize the possible disruptive or burdensome effect of such requirements. It is a common misconception, however, that making facilities accessible may have an adverse effect on the environment, particularly in environmentally sensitive areas. Experience indicates that proper planning and design, and proper construction and renovation of facilities should protect and maintain the integrity of the natural environment.

National Park Service Experience. An agency with considerable experience in providing access to people with disabilities while protecting environmental interests is the National Park Service. In implementing the requirements of section 504 of the Rehabilitation Act of 1973, the National Park Service (NPS) has spent the last decade and a half developing ways to make parks and recreation areas accessible to all persons with disabilities. At first blush, park and recreation facilities seem to pose challenging design questions: how can the Grand Canyon, Rocky Mountains, Cape Cod National Seashore, or Hawaiian Volcanoes be made accessible? In fact, through the application of a few simple principles, the National Park Service has found it feasible to provide an effective level of accessibility at almost all of its parks and facilities without undercutting environmental integrity.

NPS has stated as one of its guiding principles: "The degree of accessibility provided will be proportionately related to the degree of man-made modifications made to the area or facility and to the significance of the facility."⁷⁰ Visitors' centers, for example, have a high degree of importance and are highly man made, so accessibility should be optimal. In areas like campgrounds, which have some man-made modifications, it may be appropriate only to make a few campsites accessible. In certain natural areas with extreme slopes, rugged terrain, and no man-made modifications, accessibility features required will be minimal. Even in these areas, park staff are required to take steps to assist visitors with disabilities to experience, as nearly as is feasible, the type of recreation experience available at the site.

The common-sense accessibility policies of the National Park Service are consistent with the ADA. Full access is not required when (1) in the case of new facilities, access would be "structurally impracticable;" (2) in the case of existing facilities, access is not "readily achievable;" or (3) in the case of altered facilities, access would be beyond the "maximum extent feasible."

When full accessibility is not possible, the ADA requires alternative methods of providing access. A similar approach has already been implemented in many programs under the jurisdiction of the Park Service. The Statue of Liberty is a good example. While the Statue was undergoing renovation, the architects determined that it was structurally impossible to provide an elevator to the lookout area in the crown. Yet, being in the crown area and the view from it constitute one of the major experiences available to visitors at the park. To compensate for the inaccessibility of that area for persons unable to climb the stairs to the top, a full-scale model of the crown was developed and displayed in the museum at the site, so that people can enter it and get an idea of its size. A video presentation of the view from the top is also provided. Of course, such alternative methods must be used with some caution to avoid superficial, unequal solutions—seeing a picture of a wild and scenic river is no substitute for rafting the river. People with disabilities should have the opportunity for the first-hand experience whenever possible.

Other Agencies. In addition to the National Park Service, other federal agencies such as the U.S. Forest Service, the Fish and Wildlife Service, and the U.S. Army Corps of Engineers are also experienced in developing accessible facilities. A number of states have passed legislation mandating accessibility in their park and recreation facilities.⁷¹ The experiences of all these agencies have demonstrated that making facilities accessible can be accomplished through means that are in harmony with the environment.

STANDARDS, GUIDELINES, AND TECHNICAL ASSISTANCE REGARDING ACCESSIBILITY OF PUBLIC ACCOMMODATIONS

PUBLIC ACCOMMODATIONS GENERALLY

A variety of standards, guidelines, technical-assistance documents, and how-to guides are already available regarding access for people with disabilities to various types of public accommodations.

At the time the ADA was enacted, considerable guidance for applying accessibility requirements to particular circumstances was available under existing standards: the ANSI standards (promulgated by the American National Standards Institute)⁷² and the UFAS (Uniform Federal Accessibility Standards)⁷³ are two examples. ANSI, as a private standards-setting organization, has promulgated codes covering many aspects of the built environment that are used in most parts of the country. The large majority of states already have some form of accessibility requirements,⁷⁴ and ANSI's accessibility standards are the standards most often referenced by existing local and state accessibility laws.⁷⁵

UFAS are similar in many respects to ANSI, but have been carefully reworked by the four principal standard-setting federal departments (HUD, GSA, DOT, and the Postal Service) for use in enforcing existing federal rules requiring nondiscrimination on the basis of handicap. UFAS is particularly pertinent as a starting point for standards under the ADA, because UFAS includes thorough scoping requirements that clarify exactly what standards apply in what situations. UFAS specify for designers exactly what is required, and eliminate potential confusion that might be engendered by a less detailed set of standards.

The ADA provides that the Department of Justice will issue standards consistent with minimum guidelines developed by the ATBCB, which shall extrapolate upon existing Minimum Guidelines and Requirements for Accessible Design and apply them to the various types of facilities and places of public accommodation and public services covered by titles II and III of the Act. In addition to formal standards such as UFAS that apply to places of public accommodation, there are a variety of technical assistance manuals and how-to guides that give nuts-and-bolts descriptions of how to achieve accessibility. A number of guides are available for the hotel and motel industry. Manuals on how to conduct an accessible conference or meeting are also

available. A sample list of such guides appears at the conclusion of this chapter.

PARKS AND RECREATIONAL FACILITIES

There are a number of sets of standards and how-to guides regarding access for people with disabilities to park and recreational facilities.

Existing accessibility standards, UFAS and ANSI, are applicable to the majority of such facilities either directly or indirectly. Both UFAS and ANSI include standards for buildings, bathrooms, parking lots, entrances, and so forth. Nature centers, visitors' centers, and many other park and recreational facilities are buildings, and as such are subject to accessibility standards applicable to other buildings. Requirements regarding bathroom and parking facilities are the same. UFAS has standards for certain special uses, such as restaurants, housing, and assembly and mercantile areas. These standards can be applied to recreational facilities.

Even where existing accessibility standards do not apply directly, they may provide substantial guidance indirectly. For facilities such as fishing piers, campgrounds, and nature trails, UFAS and ANSI can lend significant direction. Major elements of accessible design under UFAS, including parking, accessible route, entrance and egress, bathrooms, and water fountains, can be applied or adapted to such facilities. Specifications for access to a pier, for example, can be extrapolated from UFAS simply by considering the pier as an extension of the pathway, and applying appropriate criteria for making a pathway accessible.

Because accessibility was required by section 504 of the Rehabilitation Act of 1973, guidelines for federally assisted and federally conducted programs in the areas of parks and recreation have been available since the mid-1970s. Examples include guides to making parks accessible for persons with physical impairments and hearing and speech impairments and guides for accessible fishing (U.S. Department of Housing and Urban Development 1976; National Park Service 1986; Nordhaus, Kantrowitz, and Siembieda 1984). A national directory of accessible parks is also available (Northern Cartographic 1988). In addition, the National Park Service has produced two videotapes on accessibility. (They are listed at the end of the chapter.)

HISTORIC BUILDINGS

If an existing historic building is not being otherwise altered or renovated, barriers must be removed when doing so is "readily achievable." This standard leaves considerable room for balancing the need for accessibility with maintaining the integrity of the building's historically significant features. Under existing law, providing access to historic properties has generally been found to be achievable without destroying a property's historic significance. The National Park Service has established an accessibility policy, which may be summarized as follows: "The issue is not *if* we should make historic properties accessible but *how* to provide the *highest* level of access with the *lowest* level of impact."⁷⁶

Section 504(c) of the ADA requires the ATBCB to develop minimum guidelines for "qualified historic properties."⁷⁷ These guidelines are to be generally consistent with the standards for accessibility of historic properties under UFAS. UFAS contains provisions that allow access to be provided to certified historic buildings in alternative ways.⁷⁸ For example, if it would impair the historic facade of a building to make the primary entrance accessible, another entrance can be made accessible.

COST CONSIDERATIONS

MAKING NEW FACILITIES ACCESSIBLE

The regulatory-impact statement issued in connection with the section 504 rule by the Department of Health, Education and Welfare in 1977 estimated that a new building could be made accessible at an additional cost of one half of one percent (.5 percent) of the total cost of construction.⁷⁹ Other studies, prior and subsequent to the 1977 estimate, have lent support to the conclusion that accessibility costs in the construction of new buildings are extremely low. In the mid 1960s the National League of Cities studied costs of access for people with disabilities when considering a national commission on architectural barriers; the study showed that when planned into the initial design, accessibility features usually cost less than one-half of one percent.⁸⁰ A Syracuse University study conducted for HUD reached the same conclusion.⁸¹ In 1975, the General Accounting Office estimated that accessibility in a

new building can be accomplished for less than one-tenth of one percent of overall costs.⁸²

Other authorities have concurred with these estimates that accessibility in a new building should not cost more than one-tenth to one-half of one percent of construction costs.⁸³ In 1981 the ATBCB prepared for the Office of Management and Budget a report of cost information based upon data provided by the federal accessibility standard-setting agencies. The report noted that whereas accessibility can generally be achieved at .5 percent of the construction cost, "this percentage would be even lower if the total costs were considered (i.e., architectural and engineering fees, cost of land, landscaping, and the like)."⁸⁴

Studies and authorities generally agree that the costs of accessibility in new construction are quite low. In its ADA cost estimates in 1990, the Congressional Budget Office referred to a study conducted by the Department of Housing and Urban Development in 1978, which had found that the cost of making a building accessible is less than one percent of total construction costs if the accessibility features are included in the original building design.⁸⁵ The CBO also noted that "[a]ll states currently mandate accessibility in newly-constructed, state-owned buildings and therefore would incur little or no costs if this bill were to be enacted."⁸⁶

COSTS OF MAKING EXISTING INACCESSIBLE BUILDINGS ACCESSIBLE

The costs of alterations to render existing buildings accessible vary widely, depending upon the type and age of the building, the extent of architectural and communication barriers present, and other factors. While Congress was considering the ADA, the National Federation of Independent Business (NFIB) presented cost figures to demonstrate its claim that costs of making existing buildings accessible would be substantial and hard for small business to bear; NFIB stated that the following figures were "based upon several studies and reputable news articles published during 1988":

- \$1,000 to \$10,000 for a concrete ramp (cost depending on the number of steps to be ramped)
- \$3,000 to widen and install a new exterior door
- \$300 to \$600 to widen and install a new interior door
- \$200 to lower an existing water fountain
- \$300 to \$3,000 to modify an existing public restroom⁸⁷

Generally, renovations to make buildings accessible are estimated to vary between one-half to three percent of construction costs of an overall renovation or of a building's underlying value.⁸⁸ The GAO has concluded that the cost of altering existing buildings to make them accessible "is relatively small."⁸⁹

DEFERENCE TO NEEDS OF SMALL BUSINESSES

During congressional consideration of the legislation, the small-business community expressed a great deal of concern that the requirements of the ADA would impose serious hardships upon small businesses.⁹⁰ In response, the ADA was carefully crafted so that each of the major requirements of the Act considers and makes allowances for the important and unique needs of the small-business operator. The following are some of the ways in which the public-accommodations provisions⁹¹ of the ADA defer to the characteristics and needs of small businesses.

THE READILY ACHIEVABLE LIMITATION

As noted previously, the ADA places a limit on the requirement for removing architectural and communication barriers in existing public accommodations—such barriers need not be removed unless doing so is "readily achievable," that is, is "easily accomplishable and able to be carried out without much difficulty or expense."⁹² The size and budget of a business are explicitly considered in determining what is readily achievable. A Mom-and-Pop store is clearly held to a much lower standard than is a highly financed, national enterprise. A struggling small business will be required to do much less than a bigger, more well-to-do establishment.

UNDUE BURDEN LIMITATION REGARDING AUXILIARY AIDS AND SERVICES

The requirement that places of public accommodation make available "auxiliary aids and services" does not apply in circumstances where the provisions of such aids and services would "fundamentally alter" or would "result in undue burden."⁹³ The committee reports note that the term "undue burden" is analogous to the phrase "undue hardship" in

the employment section of the ADA, and that “the determination of whether the provision of an auxiliary aid or service imposes an undue burden on a business will be made on a case-by-case basis, taking into account the same factors used for purposes of determining ‘undue hardship.’”⁹⁴ In determining whether providing an auxiliary aid or service amounts to an undue burden, the size, budget, and circumstances of a business are expressly relevant. A struggling small business will be excused from providing an auxiliary aid or service in circumstances where a larger, more prosperous business might be required to provide it.

THE ELEVATOR EXCEPTION FOR NEW CONSTRUCTION AND ALTERATIONS

The inclusion of accessibility features in the design and construction of new facilities and in renovation projects can usually be accomplished at relatively little expense. To further protect small businesses, however, the Senate compromise bill incorporated a specific exception to accessibility requirements with regard to elevators in small buildings. Whereas the previous version of the bill would have required elevators where necessary for accessibility of upper floors in new construction and certain major renovations, the Senate compromise specifically provided that elevators are not required “for facilities that are less than three stories or that have less than 3,000 square feet per story.”⁹⁵ Arguably, elevators in such circumstances might constitute only a small and manageable percentage of overall building and renovation costs, but to make absolutely sure that small-building owners and builders would not be unduly burdened, the Act excepts small buildings from the elevator requirement—the single most potentially costly accessibility feature.

THE “READILY-ACCESSIBLE-TO-AND-USABLE-BY” ACCESSIBILITY STANDARD

The ADA does not require total or universal accessibility, even for newly constructed buildings subject to its requirements, but incorporates a standard of accessibility developed under federal statutes and regulations—“readily accessible to and usable by.” This standard imposes accessibility obligations that are tailored to the type and use of each particular facility. The committee reports note that “the term does not necessarily require the accessibility of every part of every area of a

facility.”⁹⁶ The term is intended to enable people with disabilities “to get to, enter, and use a facility.”⁹⁷

Making facilities readily accessible to and usable by persons with disabilities is a case-by-case process that considers a facility’s physical structure and the nature of its current and projected activities. A small facility will have fewer areas and services to make accessible.

Complying with the readily-accessible-to-and-usable-by requirement of the ADA will require a business to make its services and facilities accessible to persons with disabilities, but will not require it to add additional features not made available to persons without disabilities. For example, a business that does not provide drinking fountains or restroom facilities for the use of its customers will not be forced to add accessible fountains or toilets for customers with disabilities. Under this standard, small businesses with the fewest “frills” will have fewer such services and conveniences to make accessible.

ALTERNATIVE MEANS TO SERVE CUSTOMERS

Where the removal of an access barrier is not required under the ADA because such removal is not readily achievable, the ADA permits businesses to make goods and services available “through alternative methods.”⁹⁸ Such methods involve means by which small businesses can accommodate the needs of customers with disabilities without hurting their businesses or incurring extensive expenses.

TELECOMMUNICATIONS RELAY SERVICES

Title IV of the ADA provides for the establishment of a system of telecommunications relay services for individuals with speech or hearing impairments. Although it may not be apparent on its face, the development of this relay service is an accommodation to the interests of small businesses. In prior versions of the ADA where there was no relay-service requirement, one of the potential obligations upon places of public accommodation was the purchase and operation of a Telecommunications Device for the Deaf (TDD) so that customers and potential customers could call on their TDDs to make reservations, purchase tickets, inquire about products and prices, and check on store hours.

Although portable TDDs are relatively inexpensive (a good unit can usually be purchased for around \$200), there was some concern that it was too burdensome for small businesses to require that all such businesses must have TDDs. As an alternative, the relay-service provisions

were developed. Under the requirements of title IV, each area and locality of the country will be served by a telecommunications relay service, and individuals using TDDs will be able to call the relay service and have their inquiries and reservations passed on by voice to the business. Small businesses were thus spared the requirement that all of them incur the modest costs of obtaining TDDs.

Table 1 summarizes the provisions related to public accommodations that are tailored to consider the concerns of small businesses.

It is clear that the ADA was molded with an eye toward accommodating the interests of small businesses. In his remarks at the signing of the bill, President Bush declared:

I know there have been concerns that the ADA may be vague or costly, or may lead endlessly to litigation. But I want to reassure you right now that my administration and the United States Congress have carefully crafted this Act. We've all been determined to ensure that it gives flexibility . . . and we've been committed to containing the costs that may be incurred."⁹

THE FRUITS OF PUBLIC ACCOMMODATIONS ACCESS REQUIREMENTS

A widely accepted premise of the American system of government is that the nation has an obligation to guarantee equal opportunity for its citizens, to prohibit discrimination, and to regulate facilities in the public interest. Consequently, access for people with disabilities has increasingly gained recognition and acceptance as a legitimate public and governmental interest. Given that a significant portion of the populace has a disability or will experience one at some point, such requirements do not represent a fiscal sacrifice for a select few, but a basic insurance policy provided by our entire society on behalf of the entire society.

ADA access requirements represent a crystallization of conviction that at this point in the development of our society, we have enough understanding of the significant life limitations posed by attitudinal, architectural, and communications barriers to millions of our citizens that it is folly to continue to tolerate such barriers. To continue to erect inaccessible public facilities, for example, when access can be provided

TABLE 1
Accommodations to the Interests of Small Business

Obligation	Accommodation to Small business	Effect
Removing architectural and communications barriers in existing facilities	Readily achievable limitation	Do not have to make changes that involve much difficulty or expense; takes into account financial resources and size of the business
Providing auxiliary aids and services	Undue burden and fundamental alterations	Do not have to provide if doing so would unduly burden or fundamentally alter a business; takes into account financial resources and size of the business
Making new and renovated facilities accessible	Small building elevator exception	Do not have to install elevator in buildings under 3 stories or having fewer than 3,000 square feet per story
	Readily-accessible-to-and-usable-by concept	Tailored to each type of facility; does not require full accessibility of all features, but a reasonable number; facilities having fewer areas and amenities will have fewer to make accessible
Providing access to goods and services	Alternative methods	Where changes to ensure access not readily achievable, permits businesses to use alternative methods
Communications access for TDD users	Relay services	Rather than requiring each business to have a TDD, establishes a relay system

so cheaply, is to continue a form of discrimination that can be characterized as ignorant, at best, or, at worst, as intentional. The ADA inaugurates a new strand of public policy for the 1990s and beyond that takes cognizance of the increasing age of our society, of the many groups of people with disabilities whose talents are needed by our culture and economy, and of the need to decrease the percentage of our citizenry surviving on benefits and entitlements because of discrimination and an inaccessible environment. Such positive objectives provide ample justification for regulating the operations of public accommodations to impose modest nondiscriminatory obligations.

The ADA represents an important advance toward assuring that places of public accommodation will begin to include people with disabilities as full and equal parts of the "public" they serve; people with disabilities will be afforded "the right to be treated as equal members of the community with respect to public accommodations" that Justice Goldberg advocated for all Americans in the 1960s in *Bell v. Maryland*.¹⁰⁰

NOTES

1. In introducing the original Americans with Disabilities Act bill in the Senate in 1988, Senator Lowell Weicker noted that the roots of public accommodations civil-rights laws could ultimately be traced to the Greensboro sit-ins. 134 Cong. Rec. S 5107 (Daily Edition) (April 28, 1988).
2. 109 U.S. 3, 19 (1883).
3. 378 U.S. 226 (1964).
4. *Id.*, at 250 (opinion of Douglas, J.).
5. *Id.*, at 286 (Goldberg, J., concurring).
6. *Id.*, at 252; 294-95.
7. 42 U.S.C. §2000a et seq.
8. *Americans with Disabilities Act of 1989: Hearings on S. 933 before the Senate Committee on Labor and Human Resources*, 101st Cong., 1st Sess., 64-65 (1989).
9. Remarks by the President during Ceremony for the Signing of the Americans with Disabilities Act of 1990, July 26, 1990, at 2.
10. 42 U.S.C. §2000a.
11. 42 U.S.C. §12181(7). Entities are covered by title III if they are on the list and their operations "affect commerce."
12. 42 U.S.C. §§301(6) and (7).
13. 42 U.S.C. §§12187.
14. 42 U.S.C. §2000a(e).
15. *Hearings on S. 933 before the Senate Committee on Labor and Human*

Resources, 101st Cong., 1st Sess., 815 (1989) (testimony of Attorney General Thornburgh).

16. Many multifamily residences are subject to the accessibility requirements of the Fair Housing Amendments Act.
17. 42 U.S.C. §12183(a).
18. 42 U.S.C. §12181(2).
19. See, e.g., *United States v. Darby*, 312 U.S. 100 (1941); *Wickard v. Filburn*, 317 U.S. 111 (1942); *Atlanta Motel v. United States*, 379 U.S. 241 (1964); *Katzenbach v. McClung*, 379 U.S. 294 (1964); *Perez v. United States*, 402 U.S. 146 (1971); *Hodel v. Virginia Surface Mining and Reclamation Association*, 452 U.S. 264 (1981); *Hodel v. Indiana*, 452 U.S. 2376 (1981).
20. 42 U.S.C. §12182(a).
21. 42 U.S.C. §12182(b)(1).
22. 42 U.S.C. §12182(b)(2).
23. 42 U.S.C. §12182(b)(2)(A)(i).
24. 42 U.S.C. §§102(b)(6) and 103(a).
25. 42 U.S.C. §12182(b)(2)(A)(ii).
26. 42 U.S.C. §§102(b)(5)(A) and 101(9). In *Alexander v. Choate*, 469 U.S. 287, 299–301 (1985), the Supreme Court made interchangeable use of the phrases “reasonable accommodations” and “reasonable modifications.”
27. 442 U.S. 397, 410 (1979).
28. *Id.*
29. *New Mexico Association of Retarded Citizens v. State of N.M.*, 678 F.2d 847, 855 (10th Cir. 1982).
30. *Dopico v. Goldschmidt*, 687 F.2d 644, 653 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272, 1278 (D.C.Cir. 1981).
31. *Rhode Island Handicapped Action Commission v. Rhode Island Public Transit Authority*, 549 F.Supp. 592, 607, 611 (D.R.I. 1982).
32. *Doe v. Colautti*, 592 F.2d 704, 707–09 (3d Cir. 1979); *Turillo v. Tyson*, 535 F.Supp. 577, 587 (D.R.I. 1982); *Lynch v. Maher*, 507 F.Supp. 1268, 1280 (D.Conn. 1981); *Colin K. v. Schmidt*, 536 F.Supp. 1375, 1388 (D.R.I. 1982); *R.I. Handicapped v. Transit Authority*, 549 F.Supp. 592, 607 (D.R.I. 1982).
33. R.L. Burgdorf Jr. and C.G. Bell. 1984. Eliminating Discrimination against Physically and Mentally Handicapped Persons: A Statutory Blueprint. 8 *Mental and Physical Disabilities Law Reporter* 64, 70 (Jan./Feb.)
34. 42 U.S.C. §12182(b)(2)(A)(iii).
35. 42 U.S.C. §12102(1). The list is not exhaustive according to the Committee reports. S. Rep. No. 101–116, 101st Cong., 1st Sess., 63 (1989); H. Rep. No. 101–485, Part 2, 101st Cong., 2d Sess., 107 (1990).
36. 42 U.S.C. §12182(b) (2) (A) (iii).
37. 42 U.S.C. §§102(b)(5)(A) and 101(10). See S. Rep. No. 101–116, 101st Cong., 1st Sess., 63 (1989); H. Rep. No.101–485, Part 2, 101st Cong., 2d Sess., 106–107 (1990); H. Rep. No.101–485, Part 3, 101st Cong., 2d Sess., 59 (1990).
38. 42 U.S.C. §12182(b)(2)(A)(iv)
39. 42 U.S.C. §12181(9).

40. 42 U.S.C. §12181(9).
41. See, e.g., H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 109, 68 (1990); Part 3, 55.
42. S. Rep. No. 101-116, 101st Cong, 1st Sess., 66 (1989); H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 110 (1990).
43. 42 U.S.C. §12182(b)(2)(A)(v).
44. S. Rep. No. 101-116, 101st Cong, 1st Sess., 66 (1989); H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 110-111 (1990). The House Committee on Education and Labor adds that the theater in the last example is responsible for "notifying the public of the movie's location in any advertisements." H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 111 (1990).
45. 42 U.S.C. §12182(b)(2)(A)(iv).
46. 42 U.S.C. §12183(a).
47. See S. Rep. No. 101-116, 101st Cong, 1st Sess., 70-71 (1989); H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 120 (1990)
48. 42 U.S.C. §12183(b).
49. 42 U.S.C. §12183(a)(2). The exception regarding elevators in small buildings just discussed applies to alterations as well as new construction.
50. Id.
51. Id.
52. H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 113 (1990); H. Rep. No.101-485, Part 3, 101st Cong., 2d Sess., 64 (1990).
53. See, S. Rep. No. 101-116, 101st Cong, 1st Sess., 69 (1989); H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 117 (1990), in which the committees observe: "The phrase 'readily accessible to and usable by' is a term of art which, in slightly varied formulations, has been applied in the Architectural Barriers Act of 1968 ('ready access to, and use of'), the Fair Housing Act of 1968, as amended ('readily accessible to and usable by'), and the regulations implementing section 504 of the Rehabilitation Act of 1973 ('readily accessible to and usable by'), and is included in standards used by Federal agencies and private industry, e.g., the Uniform Federal Accessibility Standards (UFAS) ('ready access to and use of') and the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1) ('accessible to, and usable by')."
54. In particular, see General Services Administration, Department of Defense, Department of Housing and Urban Development, and U.S. Postal Service, *Uniform Federal Accessibility Standards* (U.S. Government Printing Office, 1985), originally published at 49 Fed. Reg. 31528 (Aug. 7, 1984) (hereinafter referred to as UFAS).
55. S. Rep. No. 101-116, 101st Cong, 1st Sess., 69 (1989); H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 117-118 (1990).
56. See, e.g., S. Rep. No. 101-116, 101st Cong, 1st Sess., 69-70 (1989); H. Rep. No.101-485, Part 2, 101st Cong., 2d Sess., 117-119 (1990).
57. 42 U.S.C. §12183(b).
58. S. Rep. No. 116, 101st Cong., 1st Sess. 67 (1989).
59. See, e.g., 45 CFR 84.3(i).
60. American National Standards Institute, *American National Standard for*

Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (1986) at 15, §3.5 and *Uniform Federal Accessibility Standards*, note 54 *supra*, at 4, §3.5.

61. 42 U.S.C. §12186(b).
62. 42 U.S.C. §12186(c).
63. Architectural and Transportation Barriers Compliance Board, "Minimum Guidelines and Requirements for Accessible Design," 36 CFR Part 1190, originally published at 47 Fed. Reg. 33862 (Aug. 4, 1982) (hereinafter referred to as MGRAD).
64. 42 U.S.C. §12204.
65. 42 U.S.C. §3604(f)(5)(C).
66. 42 U.S.C. §12188(b)(1)(A)(ii). Such certification can take place only after prior notice and a public hearing, and in consultation with the ATBCB.
67. 42 U.S.C. §12181(9).
68. H. Rep. No. 711, 100th Cong., 2d Sess. 27 (1988).
69. UFAS, note 54 *supra*, §§4.1.6(2), (3), (4)(c)(ii), (e), and (f) and 4.17.3 at 12-13, 38.
70. National Park Service, Special Directive 83-3.
71. See, e.g., Ill. Ann. Stat. ch. 111 1/2 §3713(r)(2) (Smith-Hurd); Mich. Stat. Ann. §3.550(301); N.C. Gen. Stat. §168-3.
72. See, note 60 *supra*.
73. See, note 54 *supra*.
74. See, e.g., Cal. Government Code §4450 (West); Fla. Stat. Ann. §553.45 et seq. (West). State architectural accessibility statutes are discussed in 82 ALR 4th 121.
75. See, e.g., Fla. Stat. Ann. sec. 553.481 (West Cum. Supp. 1990).
76. See note 70 *supra*.
77. 42 U.S.C. 12204(c).
78. UFAS, note 54 *supra*, §4.1.7. at 13-14.
79. 41 Fed. Reg. 20,333.
80. The results of this study are discussed in a pamphlet issued by the Architectural and Transportation Barriers Compliance Board (Architectural and Transportation Barriers Compliance Board 1982, 5).
81. See U.S. General Accounting Office 1990: *Persons with Disabilities: Report on Costs of Accommodations*, January 4, at 15.
82. See *id.*, at 14-15.
83. See, e.g., ATBCB 1982: *About Barriers*, p. 5; National Council on Disability 1986: *Toward Independence*, Appendix, pp. F-28 and F-29; U.S. Commission on Civil Rights 1983: *Accommodating the Spectrum of Individual Abilities*, pp. 81-82; *Congressional Record*, April 29, 1988 (Remarks of Representative Owens).
84. ATBCB 1981: ATBCB Minimum Guidelines and Requirements—Cost Information. Memorandum to James C. Miller III, March 20.
85. H. Rep. No. 101-485, Part 3, 101st Cong., 2d Sess., 80 (1990).
86. *Id.*
87. *Americans with Disabilities Act: Hearings on H.R. 2273 before the House Committee on the Judiciary*, 101st Cong., 1st Sess. 88.

88. See, e.g., ATBCB 1981: ATBCB Minimum Guidelines and Requirements—Cost Information. Memorandum to James C. Miller III, March 20, pp. 5 and 9; U.S. Commission on Civil Rights 1983: *Accommodating the Spectrum of Individual Abilities*, p. 81; Senator Paul Simon 1981: Defending the Handicapped, *National Journal*, March 14.
89. See U.S. General Accounting Office 1990: *Persons with Disabilities: Report on Costs of Accommodations*, January 4 at 15, citing a 1975 GAO report.
90. The National Federation of Independent Business, for example, testified that the legislation would create “onerous requirements,” and that “the practical implications could well be overwhelming for many small firms.” *Americans with Disabilities Act: Hearings on S. 933 Before the Senate Committee on Labor and Human Resources*, 101st Cong., 1st Sess. 507, 505 (1989).
91. This article focuses upon the public accommodations requirements of the ADA, but small business concerns are well-accounted for in other parts of the Act as well, for example, in the employment title and various requirements regarding transportation.
92. 42 U.S.C. §12181(9).
93. 42 U.S.C. §12182(b)(2)(A)(iii).
94. S. Rep. No. 101–116, 101st Cong, 1st Sess., 63 (1989); H. Rep. No.101–485, Part 2, 101st Cong., 2d Sess., 106–107 (1990).
95. 42 U.S.C. §12183(b).
96. S. Rep. No. 101–116, 101st Cong, 1st Sess., 69 (1989); H. Rep. No.101–485, Part 2, 101st Cong., 2d Sess., 117–118 (1990).
97. S. Rep. No. 101–116, 101st Cong, 1st Sess., 69 (1989); H. Rep. No.101–485, Part 2, 101st Cong., 2d Sess., 117–118 (1990).
98. 42 U.S.C. §12182(b)(2)(A)(v).
99. Remarks by the President during Ceremony for the Signing of the Americans with Disabilities Act of 1990, July 26, 1990, at 3.
100. 378 U.S. 226, 286 (1964) (Goldberg, J., concurring).

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