

**Attachment F**

**The Americans with Disability Act  
Communication Accommodation Project**

**ADA  
Questions and Answers  
for  
Deaf and Hard of Hearing  
Individuals**

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**ADA Obligations:  
State, County and Local Governments  
Places of Public Accommodation**

The questions and answers in this document are divided into 4 parts:

Part 1: Introduction

Part 2 Duties of state, county and local government agencies

Part 3: Duties of Places of public accommodation

Part 4: New and altered construction: ADAAG requirements

Information about other parts of the ADA related to Deaf, Hard of Hearing and Deaf-Blind can be obtained from the National Association of the Deaf.

**Part 1: Introduction**

**Q. What Is the ADA?**

A. The Americans with Disabilities Act (ADA) is a federal law to stop discrimination against people with disabilities. It applies to:

- Many private and public employers (Title I)
- State, county, and local government agencies (Title II)
- Private service providers who are places of public accommodation (Title III)

- Transportation facilities (Titles II and III)
- Telephone companies (Title IV)
- U.S. Congress (Title V)

In addition to the law itself, the U.S. Department of Justice, the Federal Communications Commission, the Equal Employment Opportunity Commission, the Architectural and Transportation Barriers Compliance Board, and the U.S. Department of Transportation have written federal regulations to explain the requirements of the law. The answers to these questions are, in large part, taken from the Department of Justice's (DOJ's) regulations at 28 Consolidated Federal Regulations (C.F.R.) Parts 35 and 36 and DOJ's analysis of those regulations, which can be found at 56 Fed. Reg. 35694 et seq. (July 26, 1991) for Title II and 56 Fed. Reg. 35544 et seq. (July 26, 1991) for Title III. Specific requirements for structural accessibility are taken from the ADA Accessibility Guidelines (ADAAG), found in Appendix A to 28 C.F.R. Part 36.

**Q. What are state, county, and local governments, and places of public accommodation required to do under the ADA?**

**A.** The ADA establishes different obligations for state, county and local governments and places of public accommodations. Generally, however, both must provide access and equal treatment to people with disabilities. 28 C.F.R. §35.130; 28 C.F.R. §36.201 (a). Under certain circumstances, they must also remove structural barriers from existing buildings to provide access to these individuals. 28 C.F.R. §35.150; 28 C.F.R. §36.304. For individuals who are deaf hard of hearing, or deaf-blind, they must provide "auxiliary aids and services" to ensure effective communication. 28 C.F.R. §35.160; 28 C.F.R. §36.303.

**Q. What kinds of "auxiliary aids and services" must be provided to people with hearing loss?**

**A.** The Department of Justice lists the following examples of, auxiliary aids and services: *Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, tele-communications devices for person who is deaf, hard of hearing or deaf-blinds (TTYs) and videotext displays or other effective methods of making, aurally delivered materials available to individuals who are deaf, hard of hearing or deaf-blind.*

28 C.F.R. §35.104; 28 C.F.R. §36.303 (b)(1). This list is not intended to include every possible auxiliary aid or service. People, who are deaf, hard of hearing or deaf-blind, use a wide variety of techniques to communicate. New methods or equipment might become available as technology advances. The most important thing to consider is what the person needs in order to communicate effectively in a particular situation. *See generally DOJ Analysis at 56 Fed. Reg. at 35567, 35711-12.*

**Q. What are the limits on the auxiliary aids and services requirements?**

**A.** The ADA does not require a state or local government or place of public accommodation to provide auxiliary aids that would result in an "undue burden" or in a "fundamental alteration" in the nature of the goods or services it provides. However, these entities still have a duty to furnish any available alternative auxiliary aid that would achieve effective communication and would not result in a fundamental alteration or undue burden. 23 C.F.R. §35.164, 28 C.F.R. §36.303(a)

**Q. When is it an undue burden to provide an auxiliary aid or service?**

**A.** An undue burden is something that involves a significant difficulty or expense. Factors to consider include the cost of the aid or service, the overall financial resources of the involved site and of the business or government as a whole, the number of employees at the site, legitimate necessary safety requirements, the effect on the resources and operation of the business or government, and the difficulty of locating or providing the aid or service. 28 C.F.R. §36.104; *see also DOJ Analysis at 56 Fed. Reg. at 35709.*

**Q. When is a person who is deaf, hard of hearing or deaf-blind entitled to an Interpreter?**

**A.** An interpreter should be used when the person who is deaf, hard of hearing or deaf-blind, needs this service to communicate effectively and to get equal access to services.

- Whether or not an interpreter is needed depends on the person who is deaf, hard of hearing or deaf-blind's communication skills;
- The context of the communication;
- The number of people involved;
- The importance of the communication; and
- Whether the information is complex or lengthy.

For example, the Justice Department explains that an interpreter may be necessary in situations involving communications regarding health, legal matters, and finances. See DOJ Analysis at 56 Fed. Reg. at 35567, 35712.

**Q. Who is a "qualified" interpreter?**

**A.** A qualified interpreter is defined to mean "an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. §35.104 (See also 56 Fed. Reg. at 35701); 28 C.F.R. §36.104. (See also 56 Fed. Reg. at 35553.) The definition recognizes that the interpreting skill needed for some types of communication may be higher than for other types of communication. For example, an interpreter in a doctor's office must be able to interpret complex medical terminology. Similarly, a highly skilled interpreter may be needed for a court proceeding or a theater production.

**Q. Can asking family members or friends of the person who is deaf, hard of hearing or deaf-blind to interpret satisfy the obligation to provide effective communication?**

**A.** *Generally, no.* Family members may not have sufficient sign language skills to interpret accurately. *Even if they are skilled in sign language, a family member or friend may not be "qualified" in certain situations, because of emotional or personal involvement or the person who is deaf, hard of hearing or deaf-blind's need for privacy or confidentiality.* DOJ Analysis at 56 Fed. Reg. at 35553, 35701.

**Q. Who pays for the interpreter or other auxiliary aid?**

**A.** Interpreters and other auxiliary aids must be provided free of charge. A person who is deaf, hard of hearing or deaf-blind may not be held responsible, directly or indirectly, for the costs of an auxiliary aid. For example, the cost of an interpreter for a doctor's appointment may not be passed on to a deaf patient through an insurance company. 28 C.F.R. §35.130(f); 28 C.F.R. §36.30 1 (c).

**Q. What are examples of possible ways to eliminate structural communication barriers in buildings?**

**A.** The following are examples of possible ways to eliminate structural communication barriers:

- Installing permanent flashing fire alarm lights,
- Repositioning telephones to permit TTY use:
- Installing flashing doorbells and other security alerting systems,
- Installing permanent directional signs;
- Eliminating physical partitions that limit sound waves between employees and customers;
- Providing adequate sound buffers. See 28 C.F.R. §36.304(b).

The requirements to eliminate structural barriers are sometimes different for existing and newly constructed buildings. The ADA's requirements to make existing buildings structurally accessible are discussed in Parts 2 and 3 of this document. Requirements for making new and altered buildings

structurally accessible are discussed in Part 4.

## **Part 2: Duties of State, County and Local Government Agencies**

### **Q. Which governmental places must comply with Title 3:1 of the ADA?**

**A.** All activities and programs of state, county and local governments must comply with the ADA. 28 C.F.R. §35.104. For example, Title II covers state, county and local courts and legislatures, police and fire departments, school systems, social service agencies, libraries, motor vehicle departments, and prisons. Activities of the federal Congress are covered under Title V of the ADA. All other activities of the federal government, are covered by other federal laws, not the ADA.

### **Q. Does the ADA apply only to local governments that receive federal money?**

**A.** No. In the past, individuals with disabilities needed to prove that local governments received federal assistance to receive protection from discrimination under Section 504 of the Rehabilitation Act. The ADA applies to all local governmental activities, regardless of whether or not they receive federal assistance. DOJ Analysis at 56 Fed. Reg. at 35696.

### **Q. Are governmental activities carried out by private contractors covered by the ADA?**

**A.** Yes. Services and activities provided by private contractors to local government agencies are covered by the ADA. For example, if a local government contracts with a private counseling agency, the government must make sure that the agency is in compliance with Title II's requirements. 28 C.F.R. §35.130(b).

### **Q. Who chooses which auxiliary aid or service is appropriate for a governmental agency?**

**A.** Local governments must give an individual the opportunity to request the auxiliary aid and service of his or her choice. The government shall then give primary *consideration to the expressed choice of the individual*. For example, computer-assisted transcripts for courtroom proceedings may be effective for people who are hard of hearing and use English to communicate, but sign language interpreters may be needed for individuals who use American Sign Language. 28 C.F.R. §35.160(b)(2)

### **Q. Do state, county and local governments need to make their communications by telephone accessible?**

**A.** Yes. If a state, county, or local government communicates by telephone with individuals, TTYs with a dedicated telephone line or an equally effective telecommunications system must be used to communicate with persons who are deaf, hard of hearing or deaf-blind. 28 C.F.R. §35.161. Title IV of the ADA requires the establishment of 24-hours-a-day, 7-days-a-week relay services throughout the country by July 26, 1993. 47 U.S.C. §225 et seq. These services may be used by local governments to communicate by telephone with individuals who use TTYs.

However, governmental offices and agencies that have a lot of contacts with the general public by telephone, such as city halls, public welfare offices, and other service providers, are recommended to have their own TTYs and dedicated telephone line to communicate directly with TTY users. DOJ Analysis at 56 Fed. Reg. at 35712.

### **Q. Must telephone emergency systems be accessible for TTY users?**

**A.** Yes. Local governments that provide 911 and other emergency telephone number services must make sure that TTY users can call those numbers directly, without going through a relay system. 28 C.F.R. §35.162.

**Q. Do local governments need to provide TTYs at pay phones?**

**A.** A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. At times, this may require the public entity to provide accessible telephones in its facilities. The entity can fulfill this obligation for persons who are deaf, hard of hearing or deaf-blind by providing public telephones equipped with TTYs or portable TTYs available upon request. See generally 28 C.F.R. §§35.150; 35.160.

**Q. When do state, county and local governments have to provide captioning?**

**A.** Television and videotape programs that are produced by state, county, or local governments should be captioned for individuals who are deaf or hard of hearing. DOJ Analysis at 56 Fed. Reg. at 35712.

**Q. When must state, county and local governments provide effective communication in existing facilities?**

**A.** A state, county and local government must provide effective communication in an existing building if doing so would not cause an undue burden for that agency and would not result in a fundamental alteration in the government's program or service. 28 C.F.R §35.150(a).

**Q. Must state, county and local governments provide effective communication in new and altered buildings?**

**A.** Yes, All public facilities newly constructed or altered after Jan. 26, 1992 must be readily accessible and usable by individuals with disabilities. State, county and local governments may choose from two design standards in making their facilities accessible: the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).

If a public entity chooses to follow the UFAS standards, which do not contain specific guidelines on TTY access, it must nevertheless provide effective communication for its deaf participants. One way of accomplishing this goal would be to use the ADAAG's scoping requirements for guidance on this issue. For more information on the ADAAG requirements that affect deaf and hard of hearing persons, see Part 4.

**Q. State, county and local governments often have licensing and certification programs. Are these also covered by the ADA?**

**A.** Yes. State, county and local governments cannot establish requirements for licensing or certification programs that discriminate against people with disabilities. For example, a state would not be allowed to automatically exclude individuals with hearing loss from receiving drivers' licenses. In addition, local governments must administer licensing and certification programs (including exams and courses for these programs) in a manner that does not discriminate against individuals with disabilities. 28 C.F.R. §35.130 (b)(6).

**Q. What are the obligations of public school systems to comply with Title II?**

**A.** Public school systems must comply with Title II in all of their services, programs, or activities, including those that are open to parents or to the public. For example, it may be necessary to make auxiliary aids and services available at graduation ceremonies, parent-teacher meetings, plays, adult education classes, and other events open to the public. DOJ Analysis at 56 Fed. Reg. at 35696.

**Q. Do state, county and local governments have a duty to notify individuals with disabilities about their ADA rights?**

**A.** Yes. Title II requires state, county and local governments to distribute information about their ADA duties to people with disabilities. For example, governments can distribute this information through pamphlets, posters, or television broadcasts. If television broadcasts are used, they must be captioned. 28 C.F.R. §35.106.

**Q How does a person with hearing loss file a complaint against a state or local government under Title II?**

A. Title II requires local governments with 50 or more employees to have grievance procedures to resolve Title II complaints. 28 C.F.R. §35.107(b). In addition, individuals may file complaints with the U.S. Department of Justice, or with one of eight other federal agencies responsible for enforcing different subject areas of Title II. 28 C.F.R. §35.190. Individuals may also bring a lawsuit in federal court. 42 U.S.C. §12133.

**Part 3: Duties of Places of Public Accommodation**

**Q. What places of public accommodation must comply with Title III of the ADA?**

A. Places of public accommodation are facilities that are "operated by a private entity, whose operations affect commerce." 28 C.F.R. §36.104. The law applies to more than five million private businesses and establishments in 12 different categories. For example, it covers hotels, restaurants, movies and theaters, auditoriums, doctors' offices, lawyers' offices, offices of other professionals, hospitals, nursing homes, drug stores, insurance agencies, retail stores, museums, banks, libraries, parks, private schools and colleges, amusement and recreation facilities, exercise spas, and day care centers

**Q. Does the ADA apply only to larger businesses?**

A. No. Title III of the ADA applies to all places of public accommodation, regardless of the size of the business or number of employees.

**Q. What facilities are not covered by the law?**

A. The following places are not covered by the ADA:

- Entities controlled by religious organizations.
- Private clubs, unless the private club's facilities are open to the public. In that case, those facilities are covered, but not other parts of the club's operations.
- Housing. Accessibility in rental housing is covered under another law called the Fair Housing Act. 28 C.F.R. §36.102

**Q. Who chooses the auxiliary aid or service for a place of public accommodation?**

A. The auxiliary aid requirement is flexible, and the place of public accommodation can choose among various alternatives as long as the result is effective communication for the individual with hearing loss. 28 C.F.R. §36.303(c). The Justice Department expects that "public accommodation[s] will consult with the individual with a disability before providing a particular auxiliary aid or service," because a person with a hearing loss is in the best position to know which auxiliary aid or service will achieve effective communication. DOJ Analysis at 56.Fed. Reg. at 35567, quoting House Education and Labor Report at 107.

**Q. Can a place of public accommodation ask for a deposit for the loan of portable equipment such as TTYs or receivers for assistive listening systems?**

A. Yes. Although a place of public accommodation cannot charge a fee for providing auxiliary aids, reasonable, completely refundable deposits for the loan of equipment are permissible, to make sure that the place of public accommodation will get its equipment back. DOJ Analysis at 56 Fed. Reg. at 35564.

**Q. What are the obligations of places of public accommodation to make their telephone services accessible for incoming telephone calls?**

A. Places of public accommodation must make their telephone services accessible to individuals with hearing loss. See generally 28 C.F.R. §36.202(a). In most cases, the new relay services being set up under

Title IV of the ADA will permit a person who is deaf, hard of hearing or deaf-blind to call businesses and other places of public accommodation. See 47 U.S.C. §225 et seq.; DOJ Analysis at 56 Fed. Reg. at 35567.

Banks and educational institutions are just two types of public accommodations that use interactive (also called audiotext) telephone services. These services provide a recorded message that gives the caller a choice of options as to how to direct the call. Very often relay operators have a difficult time keeping up with the speed of these and other prerecorded telephone messages. Where these services offer the only means of telephone access to the place of public accommodation, TTY users should be given an alternate method of accessing the place of public accommodation by telephone. Alternative methods may include; providing a separate, TTY accessible telephone number with a dedicated telephone line; or providing a live operator option with whom a relay operator can communicate. See generally 28 C.F.R. §36.303(c).

**Q. When must a place of public accommodation have a TTY for outgoing telephone calls?**

**A.** Places of public accommodation can use relay systems to call deaf customers and clients. But places of public accommodation must have TTYs and provide them upon request when they offer a customer, client, patient, or other person who is deaf, hard of hearing or deaf-blind the opportunity to make outgoing calls as part of their service on more than an incidental convenience basis. 28 C.F.R §36.303(d)(1). For example, hospitals and hotels that provide telephones in their rooms must have TTYs available for guests and patients who are deaf, hard of hearing or deaf-blind. Hotels should also have a TTY at the front desk to take calls from guests who use TTYs in their rooms. When a security entry system requires someone to talk to a security officer by telephone, a TTY or other effective method of communicating must be available. DOJ Analysis at 56 Fed. Reg. at 35567.

**Q. When must places of public accommodation provide captioning?**

**A.** Movie theaters are not required to present movies with open captions, but they are encouraged to do so. S. Rep. No. 101 - 116, 101 st Cong. 1 st Sess. (1989) at 64. Other places, such as museums or hospitals that provide information through soundtracks on films, videos, or slide shows, are required to make this information accessible through captioning or other effective methods. DOJ Analysis at 56 Fed. Reg. at 35567.

**Q. Do hotels/motels have to provide decoders for televisions in the guest rooms?**

**A.** Yes. Hotels that offer television service in five or more guestrooms must provide closed-caption decoders or some other effective means of decoding captions upon request. 28 C.F.R §36.303(e).

**Q. Do hospitals have to provide decoders for televisions?**

**A.** Yes. Hospitals that provide televisions for patient use must provide a decoder or other means of decoding captions, upon request. 28 C.F.R. §36.303(c).

**Q. When must places of accommodation make their existing facilities structurally accessible to individuals who are deaf or hard of hearing?**

**A.** Places of public accommodation must remove barriers if removing the barrier is easy to accomplish, without much difficulty or expense. 28 C.F.R. §36.304(a).

**Q. Must places of public accommodation build new and altered buildings in ways that eliminate communication barriers?**

**A.** Yes. For more information on the requirements of places of public accommodation to reduce barriers in new and altered facilities, see Part 4 of this booklet.

**Q. How does a person with a hearing loss file a complaint against a place of public accommodation under Title III?**

**A.** An individual may file a lawsuit to get a court order to stop discrimination. Lawsuits are limited to "preventive" relief. 28 C.F.R §36.50 1. No money damages are available, but a reasonable attorney's fee may be awarded. 28 C.F.R. §36.505. In order to give them some time to come into compliance, certain small businesses may not be sued until after July 26, 1992 (25 or fewer employees and gross receipts of \$ 1,000,000 or less) or January 26, 1993 (10 or fewer employees & gross receipts of \$500,000 or less). 28 C.F.R. §36.508(b)(1) & (2).

Individuals may also file a complaint with the Attorney General, U.S. Department of Justice, asking the Attorney General to investigate the complaint. 28 C.F.R §36.502(b). The Attorney General is authorized to investigate complaints and to bring lawsuits in cases of general public importance, or where there is a "pattern or practice" of discrimination. 28 C.F.R. §36.503. In suits brought by the Attorney General, money damages and civil penalties may be awarded (but not punitive damages). Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any later violation. 28 C.F.R. §36.504(a)(2) & (3).

#### **Part 4: New and Altered Construction: ADAAG Requirements**

##### **Q. What are the ADAAG's requirements to build new and altered buildings without structural communication barriers?**

**A.** The ADA Accessibility Guidelines contain strong and precise rules for constructing and altering places of public accommodation without structural communication barriers. State, county and local governments may also choose to follow ADAAG standards to meet their accessibility requirements in new and altered facilities. The ADA expects that most physical barriers will be removed over time, as new facilities are built or renovated. The rules contain specific details about installing permanent flashing visual alarm systems, permanent visual doorbells and other notification devices, volume-control telephones, assistive listening systems in assembly areas, and TTY pay telephones.

##### **Q. What facilities must obey the rules for new construction?**

**A.** This part of the law applies to places of public accommodation and private facilities that are designed and constructed for first occupancy after Jan. 26, 1993, and for which a completed application for a building permit or permit extension was filed after Jan. 26, 1992. 28 C.F.R. §36.401(a). State, county and local governments, which choose to follow ADAAG, must comply with these guidelines for their facilities that are built or altered after Jan. 26, 1992.

##### **Q. What is an alteration to an existing facility?**

**A.** An alteration is a remodeling or other change or rearrangement in structural parts of a place of public accommodation or a commercial facility that affects the usability of the facility. The rules for new and altered construction do not apply to normal maintenance, re-roofing, painting or wallpapering, or changes to mechanical and electrical systems. This rule applies only to physical alterations, which begin after Jan. 26, 1992. 28 C.F.R §36.402.

##### **Q. What are the duties to make an altered facility accessible?**

**A.** Alterations to existing facilities must be made in a way that ensures that the altered portion is readily accessible to and usable by individuals with disabilities, to the maximum extent feasible. The ADA does not require businesses to make alterations, but when they choose to do so, they must make sure that the altered portion of the building is usable and accessible. 28 C.F.R. §36.402(a).

As with new construction, the ADA Accessibility Guidelines contain specific rules for installing permanent flashing visual alarm systems, permanent visual doorbells and other notification devices, assistive listening systems in assembly areas, and pay telephones with volume controls and TTYs in altered facilities.

##### **Q. When must a new or altered place of public accommodation provide public pay TTYs**

**A.** If even one public pay phone is provided inside a stadium or arena, convention center, hotel with a convention center, or a covered mall, at least one pay TTY must be provided. ADAAG §4.1.3 (17)(c)(ii). If even one public pay phone is located in or next to a hospital waiting room, recovery room, or emergency room, one pay TTY must be provided at each location. ADAAG §4.1.3(17)(C)(iii).

If there are four or more public pay phones in a place of public accommodation, and at least one of these phones is located inside a building at that place, a pay TTY must be provided inside the building. ADAAG §4.1.3(17)(c)(i). In each bank of three or more public pay phones, at least one phone must be designed for portable TTYs with a shelf for the TTY an electrical outlet, and a cord long enough to reach the TTY ADAAG §4.1.3(17)(d).

**Q. What are the requirements for assistive listening systems in theaters and auditoriums?**

**A.** Existing theaters and other assembly areas must be able to provide assistive listening systems (e.g., loop, infrared, or FM transmission devices) when needed in order to ensure effective communication for deaf patrons, unless it would constitute an undue burden or fundamental alteration of the performance or presentation. See generally 28 C.F.R, §36.303(a) and (c).

Newly constructed fixed-seating assembly areas that accommodate 50 or more people or that have audioamplification systems must have a permanently installed assistive listening system. It should reach at least four percent of seats, and reach seats that are within 50 feet of the stage and have a complete view of the stage. ADAAG §§4.1.3(19)(b); 4.33(7).

**Q. What are the requirements for hotel and motel rooms to be accessible to guests with impaired hearing?**

**A.** At least 8 percent of the first 100 rooms in new or renovated hotel or motel facilities must have built-in visual alarms, visual notification devices, volume-control telephones, and an accessible electrical outlet for a TTY in proximity to the telephone. ADAAG §§9.1.3: 9.3. 1; 9.3.2. Half of those rooms must also be accessible to individuals with mobility impairments. ADAAG §9.1.2. The accessible rooms must be dispersed among classes of sleeping accommodations (e.g., luxury to basic). ADAAG §9.1.4.