

Accessibility Island Style

An Overview of ADA Requirements and how the Territories Comply



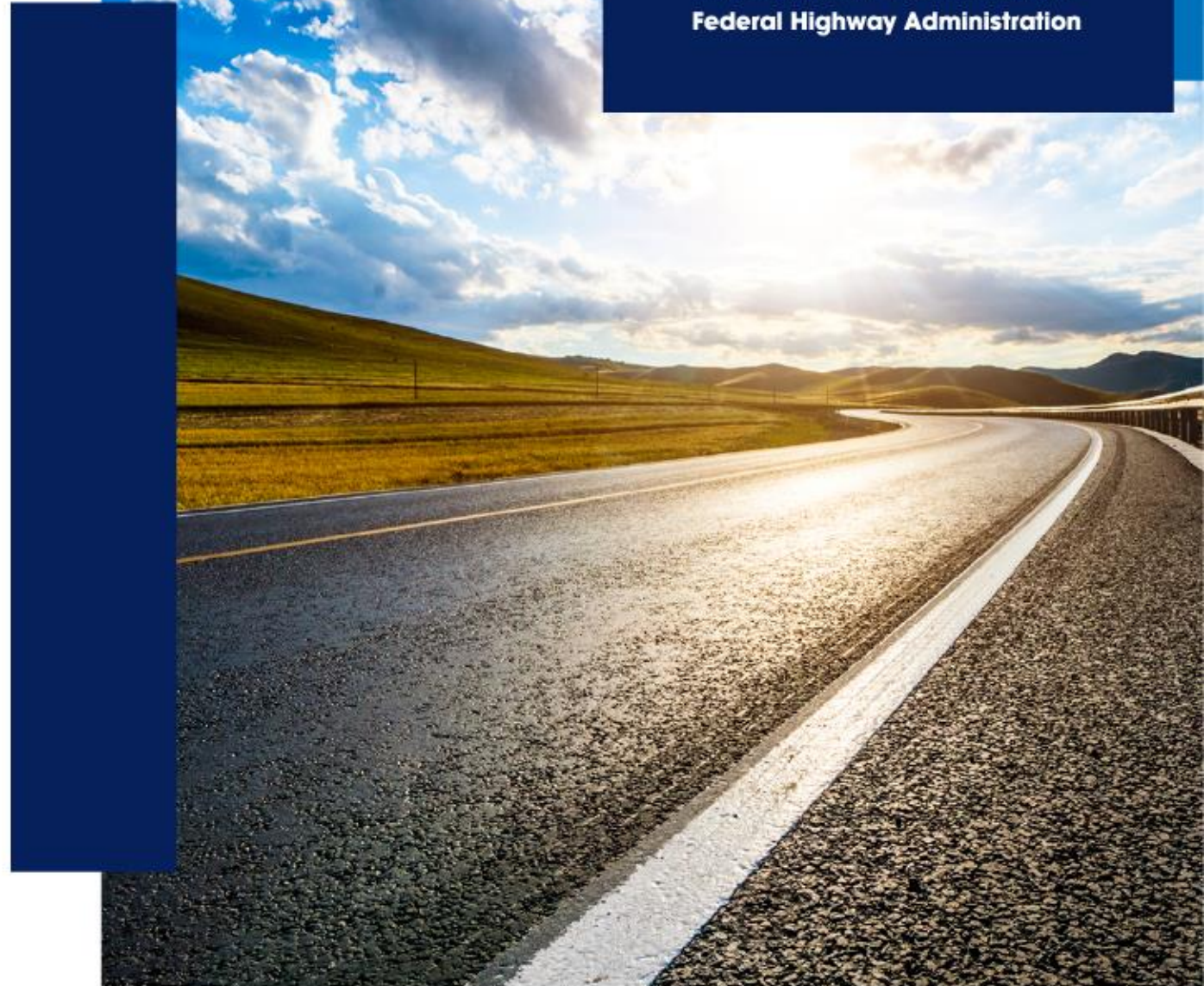
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Five Mile Markers

1. Brief discussion of the law and its applicability
2. Recognizing scope and applicability of ADA
3. Divisions' report on State of ADA Programs in the Territories
4. Building a substantially compliant ADA program
5. Transition Planning Practicum



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Does the ADA Apply to Territorial Governments ?

- The short answer is ‘yes’
- But is this really the *right question*?
- A better question is do we as transportation professionals have an obligation to plan, design, construct and maintain all facilities so they are safe and accessible for all users?



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Mile Marker 1

The Laws and what They Mean



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It's Our
Story



Begins Here



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Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d, et seq.

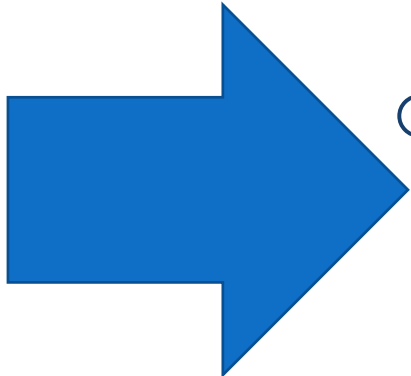
*“It is a civil right to
be independent in
America”*

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Accessibility Timeline

- Architectural Barriers Act of 1968
 - Section 504 of the Rehabilitation Act of 1973
 - Civil Rights Restoration Act of 1987
- 
- Buildings designed, built or altered with fed funds
 - Fed-aid recipients must provide accessibility in sponsored programs
 - All programs and activities of Fed-aid recipients



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‘Ends’ Here



Americans with Disabilities Act of 1990 (Title II)

“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

“The ADA is a living testament to our Nation’s commitment that we will always stand up for our neighbors’ right to live fulfilling lives.”

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A Few Other Thoughts:

- Congressional intent is for broad application of all its civil rights laws
- This includes ensuring access for, inclusion of and nondiscrimination against those with disabilities
- Even if this were not the case, consider the practicalities:
 - If a substantial part of GDP is from tourism, safe and accessible pedestrian facilities directly relate to increased profitability of service/leisure industries
 - Over 80% of us will experience a substantially limiting disability during the natural course of our lives
 - The youngest baby boomers will turn 60 next year and the oldest are in their middle 70's. They are economically, socially and politically active
 - Safe transportation facilities are accessible. Achieving vision zero is unlikely without an effort to provide accessibility in the pedestrian environment
- FHWA can assist the Territories in achieving compliance . . . Ask for help
- DO SOMETHING. You can defend almost any considered approach, but not inactivity



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Mile Marker 2

Recognizing Scope and Applicability of ADA



Triggering the Act – *New Facilities*

- ADA DOES NOT require agencies to install sidewalks or other pedestrian facilities.
- If the agency does so, however, the facilities must be designed, constructed and maintained for accessibility.
- New facilities must be accessible.




- Undue Cost and/or Technical Infeasibility are not a defense to inaccessible new construction.



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Triggering the Act – *Existing Facilities*

- Existing pedestrian facilities must be maintained for accessibility.
- Alterations to existing facilities must comply with ADA to the maximum extent feasible
- Infeasibility
 - Structural or technical constraints/complications
 - Site specific assessment
 - Little likelihood of full and strict compliance
- Undue Cost
 - Cost of providing accessibility relative to the entire transportation budget of the agency

A large, multi-pointed blue starburst graphic with a white outline, containing text.

Cost is a difficult
defense on
which to prevail

Per DOT/DOJ: Only Two Possibilities for Existing Facilities



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Alteration – provide/improve curb ramps (at a minimum)

- Applies to the roadway
- Is anything that improves overall roadway usability
- Resurfacing is by definition an alteration
- Rule of Thumb – milling = addressing curb cuts/ramps

Maintenance – does not trigger ADA improvements

- Applies to the roadway
- Is an activity that repairs one or more roadway deficiencies
- Pothole filling is by definition maintenance
- Rule of Thumb – repairs at discreet locations = maintenance

Detailed
Guidance

https://www.fhwa.dot.gov/civilrights/programs/ada/doj_fhwa_ta.cfm



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Consistent Application of ADA

- Adopt pedestrian rights of way design standards to document how the agency effects accessibility during new construction and alterations.
- Develop a written process for issuing design variations due to technical infeasibility.
- Ensure engineering and construction staff understand agency expectations.
- Stress that accessibility is required regardless of how projects are funded



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Mile Marker 3

State of the ADA/504 Program in the Territories

Accessibility in the Caribbean



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Puerto Rico

- **2018:** FHWA/PRHTA joint review found differing design standards, lack of a Self-Evaluation & Transition Plan, and 'Ley 49'
- **2019:** FHWA provided a train-the-trainer ADA course, facilitated by Dr. Colucci and the LTAP center
- **2020:** PRHTA began using PROWAG for accessible design and identified FTA funds for completion of the SE/TP
- **2022:** PRHTA unsuccessfully solicited for a consultant to deliver the TP; FTA asked for an additional attempt
- **Complaint Docket:** 2 ADA charges against PR LPAs, 1 in investigation; 1 in litigation by USDOJ





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Accessibility in the Caribbean

Virgin Islands



- **2016 & 2018:** FHWA provides the full Designing Pedestrian Facilities for Accessibility
- **2019:** FHWA program assessment finds the DPW program noncompliant for lack of a Transition Plan and other requirements
- **2020:** FHWA STIPDG creates an excel 'inventory' using Google Earth
- **2021:** FHWA/DPW collaborate to develop a posted notice, complaint filing procedure and to identify a responsible charge for the program; team also identifies DPW's asset maintenance system as a possible foundation for TP
- **2022:** Civil Rights staff join the VOLPE Community Infrastructure Group to emphasize the importance of robust program outreach and transparency; FHWA establishes a compliance timeline, beginning with developing adopting design standards for safe, accessible ped facilities
- **Complaint Docket:** No current ADA charges against VIDPW



On the Horizon for 2023 & 2024



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Accessibility

PRHTA:

- Let a consultant contract to complete the TP
- Host the CTP for ADA training and roundtable
- Leverage LTAP resources and reputation to help locals improve safety and accessibility

VIDPW:

- Select design standards for PROW that make sense for VI
- Ensure consistent application of standards from project to project (regardless of funding)
- Attend the STP ADA workshop in San Juan



Accessibility in the Pacific



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American Samoa, CNMI and Guam

American Samoa

- ADA Coordinator identified
- Notice, complaint procedure & form not posted to website
- Lacks inventory of PROW
- Lacks Transition Plan



CNMI

- ADA Coordinator identified
- Lacks posted notice and complaint procedure
- Some staff attended virtual ADA/504 training in 2022
- Lacks PROW inventory and Transition Plan



Guam

- ADA Coordinator (vacant)
- Notice, complaint procedure and form on DPW website
- Partial Inventory of PROW completed
- Lacks Transition Plan





On the Horizon for 2023 & 2024



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American Samoa, CNMI and Guam

- Verify identity of the ADA POC and ensure adequate notice & complaint filing procedures are posted to the agency (or DPW) website
- Coordinators attend an ADA 'Train the Trainer' course in order to provide training and technical assistance to staff
- Ensure that PROW design standards are in place and will align with PROWAG, once adopted
- Build/refresh partnerships with internal and external disability service groups and the Pacific ADA Center
- Develop a PROW inventory and transition plan



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