



New ADAAG—The New ADA/ABA Accessibility Guidelines

By James L.E. Terry, AIA and Dennis N. Miles, AIA, CBO

By the time this article is on your desk, the U.S. Department of Justice (DOJ) may have already released a Proposed Rule to adopt the new Americans with Disabilities Act (ADA) Accessibility Guidelines (New ADAAG) as the enforceable standards under the ADA. The New ADAAG is already the enforceable standard for the Architectural Barriers Act (ABA) for most facilities built with any federal funds.

Whenever you are doing new construction projects, alterations, or any other work in your existing buildings, the question should come up, “Does this facility, space or element have to comply with the ADA?” Although the answer to that question is almost always “yes,” the other question you should be asking is, “Does it also have to comply with the ABA or Rehab Act?” Those are much tougher questions to answer, and that’s one of the ways New ADAAG will make life much simpler: it’s going to become the single standard for non-residential facilities under all the federal access laws. But first, what’s in New ADAAG?

Like the current ADA Standards, New ADAAG gives detailed information about when and where the technical standards apply. It then gives the detailed specifications for making building components and architectural elements accessible to people with disabilities. Updated sections include elements affecting accessibility such as parking, elevators, signage, fire alarms, service counters, and plumbing fixtures. New ADAAG also includes many new sections such as recreational facilities

like swimming pools, golf facilities, play areas, fishing piers, and exercise machines. The new section on access within the Public Rights-of-Way (PROW) isn’t out yet, but it’s close and it’s going to increase accessibility and be far more practical to implement.

So, how does this New ADAAG compare to the accessibility requirements found in the building codes? The Access Board worked closely with the International Code Council’s model code writers and the ICC/ANSI A117.1 committee to write New ADAAG

and to modify the model codes to harmonize their section numbering, language and requirements as closely as possible. Since those codes are adopted by most local building departments, the result is that the new guidelines for the federal civil rights laws have requirements that are very similar to those found in the building codes. There are still significant differences that require us to check both standards to find the strictest

applicable requirements. The great news is that the new federal guidelines look so much like the A117.1 standard that the differences are much easier to see and the direct conflicts are essentially gone. To get that close, however, hundreds of changes had to be adopted. Those changes will be covered in the next Code Talkers article in this series.

For facilities designed, built, altered, or leased with federal funds and subject to the ABA, New ADAAG is better because it will be consolidating design and construction obligations under two federal standards into one. That’s why its official name is the *ADA/ABA Accessibility Guidelines*. If any of the federal agencies adopt New ADAAG as their standard under Section 504 of the Rehab Act for programs receiving funding from those agencies, UFAS will no longer apply to those projects, so all



three of the federal standards that might apply to those facilities will be combined into the one.

New ADAAG was issued by the Access Board as guidelines to DOJ under the ADA and many federal agencies under the ABA (and the Rehab Act if adopted by individual agencies); but that status as simply “guidelines” is changing. The U.S. Department of Transportation (DOT) has already adopted it as their ADA Standard for federally controlled transit facilities and vehicles while GSA and the U.S. Postal Service have also adopted it as their mandatory (enforceable) standards under the ABA. Most importantly for APPA members, it looks like DOJ may adopt it as their enforceable standards under the ADA as early as later this year.

In the case of housing projects and some dormitories, if you’re a public entity as defined by the ADA, the Uniform Federal Accessibility Standards (UFAS) will usually apply to all public and common use areas as well as to the first 5 percent of the dwelling units and the Fair Housing Act Accessibility Guidelines to the rest of the units. With housing, you’ll typically use UFAS to meet the ADA compliance requirements because the current ADA Standards don’t sufficiently address housing issues. Fair Housing recognizes several versions of the ICC/ANSI A117.1 Standards as safe harbors and the 1998 and 2003 versions are very similar to New ADAAG.

Although you’ll still have to use the A117.1 Standard for housing projects, your design, construction, and facilities management staff will find their jobs easier because it is so similar to New ADAAG that most of the requirements for public and common use areas will be very familiar. If your residence halls have a short-term use component, for public or private entities, they’re considered ADA transient lodging and covered under Section 9 of the current ADA Standards and, possibly also Fair Housing.

For non-residential facilities, there’s also a complicated answer. Until DOJ adopts New ADAAG for the ADA, almost every construction and alteration project is obligated to comply with the current ADA Standards that have been in effect since 1991. If the project includes

construction or alterations funding from a federal agency, you may also have an obligation to comply with the ABA which mainly points to New ADAAG. If the construction or alteration project will serve a program or activity that receives federal funding (instead of receiving

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federal construction dollars) it is covered by the Rehab Act Section 504 and you can usually choose the current ADA Standards or UFAS as long as you do it consistently on the same building project.

That Standard will also cover your ADA obligations if you're a public entity. Private entities will have to choose the ADA Standards where allowed by the funding agency. Because of complex inconsistencies between the various laws, regulations, and standards, where you have a choice between the ADA Standards and UFAS, it usually makes more sense to use the ADA Standards in non-residential facilities. This is a simplified analysis so, as always with federal grants and loans, you'll want to ask the agency that is funding your project to tell you (in writing if you can get it) which standards apply.

For work in the public rights-of-way, like curb ramps, sidewalks, and bus stops, the current ADA Standards or UFAS still apply under the ADA & Section 504, even if part of the construction funding is from a federal grant or loan. DOT's adoption of New ADAAG in 2006 applied only to transit facilities controlled by federal agencies and to transportation vehicles. The latest version of the Draft Public Rights-of-Way (PROW) Guidelines from the Access Board is an excellent design resource because it gives much more detailed guidance for real PROW conditions than do the ADA Standards. It could even be argued to provide equivalent facilitation under the ADA. Therefore, especially in circumstances where the current ADA Standard is silent or technically difficult to apply, it could be used instead of the current ADA Standard.

Public entities also have an obligation under the ADA to provide "program access"—nondiscriminatory, integrated access to all programs, activities, benefits, and services—to people with disabilities. Therefore, even if the current ADA Standards are silent about exactly how to provide that access, the obligation still remains. When the current Standards are silent, the entity is expected to develop reasonable and consistent, (preferably

written) policies and solutions to assure access for people with disabilities.

During the design of new facilities, the approach that offers the most accessibility is to design in compliance with the most accessible provisions from each of the Standards. While more time consuming during the design process, this will be a far easier policy to defend and explain if a problem ever comes up in the future. Fortunately, New ADAAG fills in many of the gaps between the other Standards and gives you an excellent source of very useable guidance to meet your obligations. However, until it has been fully adopted by DOJ and the other federal agencies, don't use it by itself. There are places where it provides a lower level of access than the current Standards and following those provisions prematurely could get you into trouble. Aside from those sections, New ADAAG provides a lot of guidance that you will find useful in understanding and meeting the current federal accessibility standards and the needs of people with disabilities on your campus. We'll have more details on that in your next Code Talkers column. ☎

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Additional Resources

Visit www.newadaag.com to track the adoption progress of the new guidelines. You can find more ADA articles and links to websites addressing accessibility issues at www.evanterry.com. Other online resources include:

- **The U.S. Department of Justice ADA:** www.ada.gov
- **The U.S. Access Board:** www.access-board.gov
- **ADA and ABA Accessibility Guidelines:** www.access-board.gov/ada-aba/index.htm

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