



## Accessibility in Existing Facilities

Title II and Title III of the ADA

will begin at 2PM ET



## About Your Hosts...

- TransCen, Inc.
  - Improving lives of people with disabilities through meaningful work and community inclusion
- Mid-Atlantic ADA Center, a project of TransCen, Inc.
  - Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services



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3



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4





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5

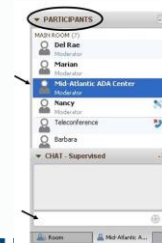


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- Questions may also be emailed to:  
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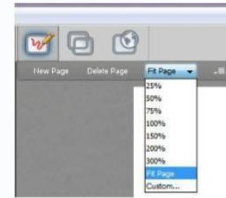


6



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7



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8





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- E-mail [ADATraining@transcen.org](mailto:ADATraining@transcen.org)
- Call 301-217-0124

9



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10





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- Requests for continuing education credits must be received by 12:00 PM EDT on Friday, **April 28, 2017**

11



## Accessibility in Existing Facilities

Title II and Title III of the ADA

12





## Our Agenda

- Title II and Title III
- Alterations
- Existing facilities not altered
  - Title II: program accessibility
  - Title III: readily achievable barrier removal
- Historic facilities

13



## Coverage

- Title II
  - All programs, services, and activities of **state and local government** entities
- Title III
  - **Public accommodations** (private entities) that own, operate, lease, or lease to any of **12 types of places that offer goods and/or services to the general public**
  - **Commercial facilities** (private factories, warehouses, etc. not open to the general public)

14



## ALTERATIONS



15



## Alterations

- Requirements apply to state and local governments (Title II), places of public accommodation, and commercial facilities (Title III)

16







## Accessible Alterations

- Alterations must be accessible to the maximum extent technically feasible
  - “Technically infeasible” means “something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements” (ADA Standards 106)

17



## What Is an Alteration?

- Change “that affects or could affect the usability of the building or facility or portion thereof” (ADA Standards 106)
  - Examples: remodeling, renovation, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of structural parts, elements, walls, or full-height partitions
  - Not alterations: normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems unless they affect usability of the building or facility

18



## Myth

- “If I touch anything, I have to fix everything”



19



## Fact #1

- Only alterations affecting “primary function areas” trigger an expanded scope of work, and then only to improve accessibility of the “path of travel” from site arrival points (public sidewalks, transit stops, parking facilities, passenger loading zones, etc.) to the altered primary function area
  - Alterations to windows, hardware, controls, electrical outlets, and signage are not considered to affect usability of primary function area ( § 35.151, § 36.403)

20





## Fact #2

- Structural modifications made for the sole purpose of providing program accessibility (Title II) or removing barriers (Title III) in existing facilities do not trigger the “path of travel” obligation, even if such modifications affect primary function areas ( § 35.151, § 36.304)

21



## What Are Primary Function Areas?

- Spaces where main activities take place
  - Includes public areas and/or employee work areas (e.g. both the dining room and the kitchen of a restaurant would be considered primary function areas)
  - Spaces generally not considered primary function areas: entrances, corridors, restrooms (except in a facility such as a highway rest stop), employee common areas (e.g. employee break rooms or locker rooms)

22



## Disproportionality

- Cost of making path of travel accessible does not have to exceed 20% of the overall cost of the alteration to the primary function area
- Priorities should be:
  - Entrance
  - Route to primary function area
  - Elements that serve the primary function area
    - Restrooms
    - Telephones
    - Drinking fountains
    - Other elements (e.g. parking, alarms, storage)

23



## TITLE II



24





## Title II: Program Accessibility

- “A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities” (Subpart D, § 35.150)

25



## Limits

- Achieving access to programs ...
  - Does not necessarily require making every existing facility accessible
  - Does not require actions that threaten or destroy historic significance of historic properties
  - Does not require fundamental alterations in the nature of programs, or undue financial or administrative burdens

26





## The Decision Makers

- Decisions about fundamental alterations and/or undue burdens must be made by high level officials
  - Considering all resources available for funding and operation of the program
  - Reason for decision must be put in writing

27



## Program Accessibility: Methods



- Redesign or acquisition of equipment
- Reassignment of services to accessible buildings
- Assignment of aides to beneficiaries
- Home visits or delivery of services at alternate accessible sites
- Alteration of existing facilities, construction of new facilities
- Use of accessible rolling stock or other conveyances
- Other methods

28





## Effectiveness

- “A public entity is not required to make structural changes in existing facilities where other methods are effective ...”

29



## Priority: Integration

- “In choosing among available methods ... a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate”

30





## Stop-Gap Measures

- Some measures may be short-term solutions or alternatives, for example ...
  - While facilities are being constructed, altered, or repaired
  - Where undue burdens limit more effective measures

31



## One Program: Multiple Sites

- To determine if program is accessible in its entirety, consider:
  - Size of the public entity
  - Specific program features at each site
  - Distance between sites
  - Travel times to sites
  - Number of sites
  - Availability of public transportation to sites

32





## TITLE III



33



## Title III: Barrier Removal

- Obligation to remove barriers in existing facilities applies to places of public accommodation (not commercial facilities)
- Barriers must be removed when it is “readily achievable” to do so

34





## Readily Achievable

- “ ... easily accomplishable and able to be carried out without much difficulty or expense” ( § 36.104)

35



## Factors to Consider

- Nature and cost of action
- Overall financial resources of site or sites; number of employees; effect on expenses and resources; legitimate safety requirements/safe operation; other impacts on operations
- Characteristics of parent entity (if there is one)
  - Geographic separateness, administrative or fiscal relationship with subsidiary site(s)
  - Overall financial resources, number of employees, number, type, and location of facilities
  - Type of operation or operations, including composition, structure, and functions of workforce

36





## Priorities for Barrier Removal

- Getting in
  - Parking, exterior routes, entrance, etc.
- Areas where goods and services are available
- Restrooms
- Other elements

37



## Continuing Obligation

- Barrier removal obligation is ongoing
  - Factors affecting what is readily achievable may change over time
  - Businesses eligible for tax incentives may use them every year

38





## Alternatives

- When barrier removal is not readily achievable, consider readily achievable alternatives:
  - Rotating/relocating activities to accessible facilities
  - Retrieving merchandise
  - Curb service
  - Home delivery

39



## Program Accessibility v Readily Achievable Barrier Removal



- Title II:
  - Programs viewed in their entirety
  - Where alternative methods are effective, existing facilities may not need to be made accessible
  - Limited by undue burden/fundamental alteration
- Title III:
  - Barrier removal must be undertaken in each and every existing facility
  - Limited by what is readily achievable

40



## Safe Harbor

- ADA Standards updated in 2010
  - “Safe harbor” for elements that **comply with older (1991) ADA Standards** applies to path of travel, program accessibility, and barrier removal activities (not to newly constructed or altered elements)

41



## HISTORIC PROPERTIES



42





## Which Statement is True?

1. Historic properties are those built before 1990.
2. Historic properties are those built more than 100 years ago.
3. Historic places are exempt from the ADA.
4. Historic places can be structures, districts, or sites.
5. Historic properties can never be used to house state or local government services (e.g. tax office); historic properties can only be used for historic preservation programs (e.g. living history museum).

43



## Historic Property

- “A building or facility that is listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate State or local law” (ADA Standards, similar language in both Title II and Title III regulations)

44





## Historic Preservation Programs

- “ ... programs conducted by a public entity that have preservation of historic properties as a primary purpose”  
( § 35.104)

45



## Historic Significance

- Threatening or destroying historic significance of historic property not required
  - Alterations
  - Program accessibility
  - Barrier removal

46





## ADA Standards: Specific Exceptions for Historic Properties

- When historic preservation authority determines alterations would threaten or destroy historic significance
  - No more than one accessible route from a site arrival point to an accessible entrance required (206.2.1, exception 1)
  - Accessible route not required to stories above or below the accessible story (206.2.3, exception 7)
  - No more than one entrance required to be accessible (206.4, exception 2)
  - Where toilet facilities are provided, no fewer than one accessible toilet room for each sex or one accessible unisex toilet room must be provided (213.2, exception 2)

47



## Questions?



48







## Contact Us

- [Mid-Atlantic ADA Center](#)  
([www.ADAinfo.org/](http://www.ADAinfo.org/))

- 1-800-949-4232 (DC, DE, MD, PA, VA, WV) or  
301-217-0124
- [ADAinfo@transcen.org](mailto:ADAinfo@transcen.org)

