

The Americans with Disabilities Act of 1990 (“ADA”) (42 U.S.C. § 12101 et seq.)

Cultural organizations, regardless of whether they receive federal financial assistance and whether they are public or private entities, must not discriminate against individuals with disabilities. Any public or private organization that meets the definition of a covered entity as contained in the ADA must comply.

In 1990, Congress enacted legislation to expand the civil rights of all individuals with disabilities. The ADA is more sweeping in its coverage than Section 504. It goes well beyond federally funded organizations to encompass private sector entities that serve the public, including cultural organizations that do not receive federal financial support. The ADA prohibits discrimination on the basis of disability in employment, state and local government services, public accommodations, commercial facilities, transportation and telecommunications.

The ADA contains five titles that extend different aspects of equal opportunity for people with disabilities. The titles and their requirements are:

Title I—Employment. Requires all employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others.

Title II—State and Local Government. Requires that all state and local governments (their departments and agencies) give people with disabilities an equal opportunity to benefit from all of their public programs, activities and services (e.g., public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings).

Title III—Public Accommodations and Services Operated by Private Organizations. Requires places of public accommodation to meet architectural accessibility standards for new and altered buildings and remove barriers in existing buildings where such removal is readily achievable; make reasonable modifications to policies, practices and procedures; provide effective communication mechanisms for people with hearing, vision or speech disabilities; and other access requirements.

Title IV—Telecommunications. Amends the Communications Act of 1934 to require common carriers (telephone companies) to provide interstate and intrastate Telecommunications Relay Services (TRS) 24 hours a day, 7 days a week. This title addresses captioning of public service announcements. (Captioning and video description of television programming are addressed in later statutes and in regulations issued by the Federal Communications Commission.)

Title V—Miscellaneous Provisions. States, among other provisions, that federal laws shall not supersede state laws with more stringent accessibility provisions.

Federal Accessibility Standards Federal law requires that organizations adhere to physical accessibility standards to comply with the three laws described above. The U.S. Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing

accessibility guidelines to assist federal standard-setting agencies to implement the Architectural Barriers Act of 1968 (ABA) and the Americans with Disabilities Act of 1991 (ADA). The Access Board has published two sets of guidelines:

- The Minimum Guidelines and Requirements for Accessible Design were used as the basis for the Uniform Federal Accessibility Standards (UFAS) published by the General Services Administration, Department of Housing and Urban Development, U.S. Postal Service and the Department of Defense under the ABA.
- The ADA Accessibility Guidelines (ADAAG) form the basis of the accessibility standards published by the Department of Justice and the Department of Transportation to implement the ADA. In 1999, the Access Board began updating and revising both standards in order to make them more consistent with one another.

These standards will contain the minimum requirements necessary for compliance with the ABA, Section 504 and the ADA, and should be completed by 2003. In general, private nonprofit and for profit cultural organizations (places of public accommodation) are subject to the ADA Standards including the ADAAG. Federal agencies, public cultural organizations (state or local government agencies) and private organizations receiving direct or indirect federal funds are subject to UFAS. This includes the National Endowment for the Humanities (NEH) and the National Endowment for the Arts (NEA). Under Title II of the ADA, as will be discussed, in certain circumstances public cultural agencies not receiving federal funding may have a choice between standards. Neither the ADA Standards including the ADAAG nor UFAS supersede state or local laws that provide greater or equal benefit to individuals with disabilities. Cultural organizations that fall under more than one of these mandatory standards should follow the requirement that provides the greatest level of accessibility.

Administrative Requirements of Section 504 and Title II of the ADA Congress passes laws and then directs various federal agencies to develop regulations that are used as the tools by which the agencies enforce the laws. For example, Congress passed the Rehabilitation Act and directed each federal agency to develop its own set of Section 504 regulations to implement agency programs. Congress passed the Americans with Disabilities Act and directed the Equal Employment Opportunity Commission (EEOC) to develop the regulations for Title I and the Department of Justice (DOJ) and Department of Transportation to develop the regulations and accessibility standards for Titles II and III.

Federal agencies each have their own Section 504 regulations. Organizations receiving federal funding should determine what the Section 504 requirements are for each agency from which it receives funding. The National Endowment for the Humanities (NEH) and the National Endowment for the Arts (NEA) amended their Section 504 regulations in 1991 to require that their grantees follow UFAS. If the grantee is also a place of public accommodation, it is also subject to Title III of the ADA, which requires compliance with the Title III regulations and ADA Standards. There are a number of administrative requirements outlined in most Section 504 regulations and/or in Title II of the ADA. Five key requirements are highlighted below.

Many state agencies and cultural organizations that receive federal funding have already met these requirements.

If an organization has not taken these steps, it should do so immediately.

1. Appoint a staff member as the ADA/504 coordinator (or accessibility coordinator) to coordinate the organization's ADA/504 obligations.
2. Provide public notice of events and activities that indicate the organization will comply with the Rehabilitation Act and the ADA.
3. Establish internal grievance procedures for individuals with disabilities.
4. Conduct a self-evaluation of all policies, practices and programs to determine if they are equally available to people with and without disabilities.
5. Develop a transition plan to identify what structural or physical changes should be made to achieve program access, and a time frame for implementation.

State Law State and local laws may affect cultural organizations and must be checked individually since they vary from state to state. There are two types of state and local laws that may have an impact on accessibility issues for cultural organizations: . Nondiscrimination laws may cover smaller cultural organizations not covered by federal law and may impose stricter standards than federal.

State and local laws may also permit lawsuits providing the successful party specific relief such as accommodations (e.g., assistive listening systems for individuals with hearing-loss or more integrated seating options for people who use wheelchairs and/or other mobility aids), as well as damages and the recovery of legal fees. Building Codes may contain technical provisions related to construction, renovations and alterations. Cultural organizations must comply with building codes when they obtain building permits and certificates of occupancy.