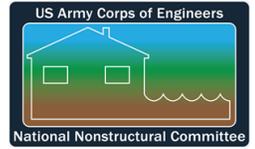




# USACE NATIONAL NONSTRUCTURAL COMMITTEE BEST PRACTICE GUIDE 2020-07



## Compliance with the Americans with Disabilities Act of 1990 & Architectural Barriers Act of 1968

1. Purpose. This Guide establishes best practices for compliance with the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA), for all USACE nonstructural projects.
2. Applicability. This Guide applies to all USACE nonstructural projects or nonstructural components of projects. State, county, and local government-owned or operated facilities, and certain privately owned facilities that provide housing are subject to the ADA and its accessibility requirements; References 3.b and 3.c provide a complete list of applicable structure types. Federal facilities are not covered by the ADA, but by an earlier law, the Architectural Barriers Act (ABA) of 1968, and must meet separate, though very similar, standards; Reference 3.d provides a complete list of applicable structure types. Private residential housing is not covered by the ADA.
3. References
  - a. United States Department of Transportation, Federal Highway Administration. "Uniform Relocation Assistance and Real Property Acquisition for Federal And Federally-Assisted Programs." 49 C.F.R. Part 24. Appendix A to Part 24, Subpart A, Section 24.2(a)(8)(vii), Persons with a disability.
  - b. United States Department of Justice, 2010. 2010 ADA Standards for Accessible Design.
  - c. United States Access Board, 2019. Webpage: About the ADA Standards. Accessed at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards>.
  - d. United States Access Board, 2019. Webpage: About the ABA Standards. Accessed at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards>
4. Background
  - a. American with Disabilities Act of 1990. The ADA prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government's programs and services. USACE projects are required to comply with the ADA, though not all structures are required to provide for accessibility. The Department of Justice has adopted revised regulations for Titles II and III of the ADA, through enforceable accessibility standards called the 2010 ADA Standards for Accessible Design, "2010 ADA Standards" (References 3.b and 3.c). On March 15, 2012, compliance with the 2010 Standards was required for new construction and alterations under Titles II and III. The 1991 ADA Standards for Accessible Design, printed as Appendix A of the Title III regulation in the Code of Federal Regulations, July 1, 1994 could be used for new construction and alterations under Titles II and III until March 14, 2012.
  - b. Architectural Barriers Act of 1968. The ABA requires access to facilities designed, built, altered, or leased with certain Federal funds. USACE projects are required to comply with the ABA, though not all structures are required to provide for accessibility. Standards issued under the ABA apply to facilities designed,

built, altered, or leased with certain federal funds (Reference 3.d). Four agencies establish the ABA standards according to guidelines issued by the United States Access Board: the General Services Administration (GSA), the Department of Defense (DOD), the Department of Housing and Urban Development (HUD), and the U.S. Postal Service (USPS). The latest editions of the ABA standards issued by GSA, DOD, and USPS are substantively the same and replace the earlier Uniform Federal Accessibility Standards. HUD's update of the standards is pending as of the date of this Guide.

c. Applicability is Determined by Structure Characteristics. The main considerations that determine the applicability of the ADA and ABA Standards are 1) ownership and/or operation (i.e., government or private), and 2) structure use (i.e., residential, commercial, or industrial).

i. Federal Government-owned or Operated Facilities. Federally-owned or operated buildings and facilities intended for a use that will require accessibility to the public, or may result in the employment or residence therein of persons with disabilities are subject to the ABA and its accessibility requirements. These facilities may include Federal buildings, including post offices, social security offices, federal courthouses and prisons, and national parks. It also includes non-Federal facilities, such as public housing units and mass transit systems, built or altered with Federal grants or loans.

ii. State, County, and Local Government-owned or Operated Facilities. State, County, and Local government-owned or operated housing and certain privately-owned facilities that provide housing are subject to the ADA and its accessibility requirements. These facilities may include public housing, student and faculty housing, employee housing, nursing homes, temporary housing provided in emergencies, schools, hospitals, public housing, courthouses, prisons, and social service facilities, such as homeless shelters and halfway houses.

iii. Privately-owned or Operated Facilities. In the private sector, the ADA's coverage of housing is limited to places of public accommodation, such as social service establishments and housing provided on or behalf a place of education. The ADA does not apply to individually-owned or leased housing in the private sector not used as a public accommodation, including single family homes, condominiums, or apartments. (Note that many types of multi-family housing in the private and public sectors are subject to the design requirements of the Fair Housing Act.) Places of public accommodation located in residential buildings, such as rental and sales offices, commercial spaces, and hotel accommodations, are covered by the 2010 ADA Standards.

## 5. Best Practices

a. Document Structure Use and Ownership as Part of Structure Inventory. Project delivery teams (PDT) should document structure ownership, operation, and use as part of the structure inventory. This may help PDTs quickly identify ADA and ABA applicability, which will inform needed accommodations and project costs.

b. Ensuring Accessibility in Elevated, Floodproofed, or Otherwise Modified Structures. Actions made to elevate, floodproof, or otherwise physically modify a structure to reduce its flood risk may impact how people with disabilities use and navigate structures. ADA and ABA Standards are applicable only to certain structures, as outlined in Section 4.c. ADA and ABA requirements and guidelines are not applicable single family homes, condominiums, or apartments. However, PDTs should follow best practices for ensuring accessibility of elevated, floodproofed structures, or otherwise modified privately-owned facilities if the project will modify ingress and egress. Ramps and elevators may be considered eligible project costs for those structures inhabited by people with disabilities. As has been practice for recent USACE projects, a letter from a licensed physician is sufficient to document need. It is not within the project scope to modify the interior of a privately-owned facility to ensure access.

c. Ensuring Accessibility for Displaced Persons. People with disabilities may be impacted by their displacement (permanent relocation) from the floodplain. In these situations, Reference 3.a states that reasonable accommodation should include the following at a minimum: doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs. PDTs should refer to guidance related to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), to ensure compliance with applicable guidelines and best practices related to ensuring accessibility for displaced persons with disabilities. Real Estate should be consulted for the latest guidance.

d. Communicate Requirements to Non-Federal Sponsors and Homeowners. Sponsors and building owners are in many cases not aware of Federal laws and guidance that govern USACE projects. PDTs are encouraged to share pertinent information with local interests during the feasibility and design phases, to ensure expectations are correctly set.

e. Tools. Common tools include field assessments and geographic information system (GIS) data. Information provided by project sponsors, building managers, and building owners may also help PDTs best understand structure characteristics.

f. Common Challenges. Information about structure ownership, operation, and use is sometimes not easily available. PDTs may look to consult local tax assessor data, project sponsors, building managers, and building owners, for such information.