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The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

The ADA requires that title II entities (State and local governments) and title III entities (businesses and nonprofit organizations that serve the public) communicate effectively with people who have communication disabilities. The goal is to ensure that communication with people with these disabilities is equally effective as communication with people without disabilities.

People who have vision, hearing, or speech disabilities (“communication disabilities”) use different ways to communicate. For example, people who are blind may give and receive information audibly rather than in writing and people who are deaf may give and receive information through writing or sign language rather than through speech.

This publication is designed to help title II and title III entities (“covered entities”) understand how the rules for effective communication, including rules that went into effect on March 15, 2011, apply to them.

- The purpose of the effective communication rules is to ensure that the person with a vision, hearing, or speech disability can communicate with, receive information from, and convey information to, the covered entity.
- Covered entities must provide auxiliary aids and services when needed to communicate effectively with people who have communication disabilities.
- The key to communicating effectively is to consider the nature, length, complexity, and context of the communication and the person’s normal method(s) of communication.
- The rules apply to communicating with the person who is receiving the covered entity’s goods or services as well as with that person’s parent, spouse, or companion in appropriate circumstances.

Auxiliary Aids and Services

The ADA uses the term “auxiliary aids and services” (“aids and services”) to refer to the ways to communicate with people who have communication disabilities.

- For people who are blind, have vision loss, or are deaf-blind, this includes providing a qualified reader; information in large print, Braille, or electronically for use with a computer screen-reading program; or an audio recording of printed information. A “qualified” reader means someone who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary.
- For people who are deaf, have hearing loss, or are deaf-blind, this includes providing a qualified note taker; a qualified sign language interpreter, oral interpreter, cued-speech interpreter, or tactile interpreter; real-time captioning; written materials; or a printed script of a stock speech (such as given on a museum or historic house tour).

- A “qualified” interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to that person) using any necessary specialized vocabulary.
- For people who have speech disabilities, this may include providing a qualified speech-to-speech transliterator (a person trained to recognize unclear speech and repeat it clearly), especially if the person will be speaking at length, such as giving testimony in court, or just taking more time to communicate with someone who uses a communication board. In some situations, keeping paper and pencil on hand so the person can write out words that staff cannot understand or simply allowing more time to communicate with someone who uses a communication board or device may provide effective communication. Staff should always listen attentively and not be afraid or embarrassed to ask the person to repeat a word or phrase they do not understand.

In addition, aids and services include a wide variety of technologies including 1) assistive listening systems and devices; 2) open captioning, closed captioning, real-time captioning, and closed caption decoders and devices; 3) telephone handset amplifiers, hearing-aid compatible telephones, text telephones (TTYs) , videophones, captioned telephones, and other voice, text, and video-based telecommunications products; 4) videotext displays; 5) screen reader software, magnification software, and optical readers; 6) video description and secondary auditory programming (SAP) devices that pick up video-described audio feeds for television programs; 7) accessibility features in electronic documents and other electronic and information technology that is accessible (either independently or through assistive technology such as screen readers).

Real-time captioning (also known as computer-assisted real-time transcription, or CART) is a service similar to court reporting in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language.

The free nationwide **telecommunications relay service** (TRS), reached by calling 7-1-1, uses communications assistants (also called CAs or relay operators) who serve as intermediaries between people who have hearing or speech disabilities who use a text telephone (TTY) or text messaging and people who use standard voice telephones. The communications assistant tells the telephone user what the other party is typing and types to tell the other party what the telephone user is saying. TRS also provides speech-to-speech transliteration for callers who have speech disabilities.

Video relay service (VRS) is a free, subscriber-based service for people who use sign language and have videophones, smart phones, or computers with video communication capabilities. For outgoing calls, the subscriber contacts the VRS interpreter, who places the call and serves as an intermediary between the subscriber and a person who uses a standard voice telephone. The interpreter tells the telephone user what the subscriber is signing and signs to the subscriber what the telephone user is saying.

Video remote interpreting (VRI) is a fee-based service that uses video conferencing technology to access an off-site interpreter to provide real-time sign language or oral interpreting services for conversations between hearing people and people who are deaf or have hearing loss. The new regulations give covered entities the choice of using VRI or on-site interpreters in situations where either would be effective. VRI can be especially useful in rural areas where on-site interpreters may be difficult to obtain. Additionally, there may be some cost advantages in using VRI in certain circumstances. However, VRI will not be effective in all circumstances. For example, it will not be effective if the person who needs the interpreter has difficulty seeing the screen (either because of vision loss or because he or she cannot be properly positioned to see the screen, because of an injury or other condition). In these circumstances, an on-site interpreter may be required.

If VRI is chosen, *all* of the following specific performance standards must be met:

- real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the face, arms, hands, and fingers of the person using sign language, regardless of his or her body position;
- a clear, audible transmission of voices; and
- adequate staff training to ensure quick set-up and proper operation.

Many deaf-blind individuals use support service providers (SSPs) to assist them in accessing the world around them. SSPs are not "aids and services" under the ADA. However, they provide mobility, orientation, and informal communication services for deaf-blind individuals and are a critically important link enabling them to independently access the community at large.

Effective Communication Provisions

Covered entities must provide aids and services when needed to communicate effectively with people who have communication disabilities.

The key to deciding what aid or service is needed to communicate *effectively* is to consider the nature, length, complexity, and context of the communication as well as the person's normal method(s) of communication.

Some easy solutions work in relatively simple and straightforward situations. For example:

- In a lunchroom or restaurant, reading the menu to a person who is blind allows that person to decide what dish to order.
- In a retail setting, pointing to product information or writing notes back and forth to answer simple questions about a product may allow a person who is deaf to decide whether to purchase the product.

Other solutions may be needed where the information being communicated is more extensive or complex. For example:

- In a law firm, providing an accessible electronic copy of a legal document that is being drafted for a client who is blind allows the client to read the draft at home using a computer screen-reading program.

- In a doctor’s office, an interpreter generally will be needed for taking the medical history of a patient who uses sign language or for discussing a serious diagnosis and its treatment options.

A person’s method(s) of communication are also key. For example, sign language interpreters are effective only for people who use sign language. Other methods of communication, such as those described above, are needed for people who may have lost their hearing later in life and do not use sign language. Similarly, Braille is effective only for people who read Braille. Other methods are needed for people with vision disabilities who do not read Braille, such as providing accessible electronic text documents, forms, etc., that can be accessed by the person’s screen reader program.

Covered entities are also required to accept telephone calls placed through TRS and VRS, and staff who answer the telephone must treat relay calls just like other calls. The communications assistant will explain how the system works if necessary.

Remember, the purpose of the effective communication rules is to ensure that the person with a communication disability can receive information from, and convey information to, the covered entity.

Companions

In many situations, covered entities communicate with someone other than the person who is receiving their goods or services. For example, school staff usually talk to a parent about a child’s progress; hospital staff often talk to a patient’s spouse, other relative, or friend about the patient’s condition or prognosis. The rules refer to such people as “companions” and require covered entities to provide effective communication for companions who have communication disabilities.

The term “companion” includes any family member, friend, or associate of a person seeking or receiving an entity’s goods or services who is an appropriate person with whom the entity should communicate.

Use of Accompanying Adults or Children as Interpreters

Historically, many covered entities have expected a person who uses sign language to bring a family member or friend to interpret for him or her. These people often lacked the impartiality and specialized vocabulary needed to interpret effectively and accurately. It was particularly problematic to use people’s children as interpreters. The ADA places responsibility for providing effective communication, including the use of interpreters, directly on covered entities. They cannot require a person to bring someone to interpret for him or her. A covered entity can rely on a companion to interpret in only two situations.

- 1) In an emergency involving an imminent threat to the safety or welfare of an individual or the public, an adult or minor child accompanying a person who uses sign language may be relied upon to interpret or facilitate communication only when a qualified interpreter is not available.
- 2) In situations *not* involving an imminent threat, an adult accompanying someone who uses sign language may be relied upon to interpret or facilitate communication when a) the individual requests this, b) the accompanying adult agrees, and c) reliance on the accompanying adult is appropriate under the circumstances. This exception does *not* apply to minor children.

Even under exception (2), covered entities may *not* rely on an accompanying adult to interpret when there is reason to doubt the person’s impartiality or effectiveness. For example:

- It would be inappropriate to rely on a companion to interpret who feels conflicted about communicating bad news to the person or has a personal stake in the outcome of a situation.
- When responding to a call alleging spousal abuse, police should never rely on one spouse to interpret for the other spouse.

Who Decides Which Aid or Services is Needed?

When choosing an aid or service, title II entities are *required* to give primary consideration to the choice of aid or service requested by the person who has a communication disability. The state or local government must honor the person’s choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden (see limitations below). If the choice expressed by the person with a disability would result in an undue burden or a fundamental alteration, the public entity still has an obligation to provide an alternative aid or service that provides effective communication if one is available.

Title III entities are *encouraged* to consult with the person with a disability to discuss what aid or service is appropriate. The goal is to provide an aid or service that will be effective, given the nature of what is being communicated and the person’s method of communicating.

Covered entities may require reasonable advance notice from people requesting aids or services, based on the length of time needed to acquire the aid or service, but may not impose excessive advance notice requirements. “Walk-in” requests for aids and services must also be honored to the extent possible.

Limitations

Covered entities are required to provide aids and services unless doing so would result in an “undue burden,” which is defined as significant difficulty or expense. If a particular aid or service would result in an undue burden, the entity must provide another effective aid or service, if possible, that would not result in an undue burden. Determining what constitutes an undue burden will vary from entity to entity and sometimes from one year to the next. The impact of changing economic conditions on the resources available to an entity may also be taken into consideration in making this determination.

State and local governments: in determining whether a particular aid or service would result in undue financial and administrative burdens, a title II entity should take into consideration the cost of the particular aid or service in light of all resources available to fund the program, service, or activity and the effect on other expenses or operations. The decision that a particular aid or service would result in an undue burden must be made by a high-level official, no lower than a Department head, and must include a written statement of the reasons for reaching that conclusion.

Businesses and nonprofits: in determining whether a particular aid or service would result in an undue burden, a title III entity should take into consideration the nature and cost of the aid or service relative to their size, overall financial resources, and overall expenses. In general, a business or nonprofit with greater resources is expected to do more to ensure effective communication than one with fewer resources. If the entity has a parent company, the administrative and financial relationship, as well as the size, resources, and expenses of the parent company, would also be considered.

In addition, covered entities are not required to provide any particular aid or service in those rare circumstances where it would fundamentally alter the nature of the goods or services they provide to the public. In the performing arts, for example, slowing down the action on stage in order to describe the action for patrons who are blind or have vision loss may fundamentally alter the nature of a play or dance performance.

Staff Training

A critical and often overlooked component of ensuring success is comprehensive and ongoing staff training. Covered entities may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise. Covered entities should teach staff about the ADA's requirements for communicating effectively with people who have communication disabilities. Many local disability organizations, including Centers for Independent Living, conduct ADA trainings in their communities. The Department's ADA Information Line can provide local contact information for these organizations.

For more information about the ADA please go to www.ADA.gov or call 800-514-0301 (voice) and 800-514-0383 (TTY)

**M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time) to speak with an ADA Specialist.
All calls are confidential.**

Public Accommodations

National Association of the Deaf (NAD)

Retrieved from: <https://www.nad.org/resources/civil-rights-laws/americans-with-disabilities-act/public-accommodations/>

Places of public accommodation must give persons with disabilities an equal opportunity to participate in and to benefit from their services. They cannot provide unequal or separate benefits to persons with disabilities. They must modify their policies and practices when necessary to provide equal access to services and facilities.

In order to provide equal access, all public accommodations are required to provide auxiliary aids and services to ensure effective communication. 28 C.F.R. § 36.303(c). The ADA also requires removal of structural communication barriers that are in existing facilities, and installation of flashing alarm systems, permanent signage, and adequate sound buffers. Businesses may not impose a surcharge on a particular individual with a disability to cover the cost of ensuring equal access for that person. 28 C.F.R. § 36.301(c).

Businesses are expected to "consult with the individual with a disability before providing a particular auxiliary aid or service." 56 Fed. Reg. at 35567. A comprehensive list of auxiliary aids and services required by the ADA for deaf and hard of hearing people includes, but is not limited to: "[q]ualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons, videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments." 28 C.F.R. § 36.303(b)(1)

In choosing which auxiliary aid or service to provide, the most important consideration is the type of service that will be necessary to ensure "effective communication" with an individual who is deaf or hard of hearing. For example, in addition to providing a qualified interpreter, it may be necessary to change seating arrangements or

lighting so that there is a clear line of sight to the interpreter, and so that the interpreter is clearly visible. Businesses may need to instruct employees to accept calls made through a relay service, even though such calls may take longer to complete than other telephone calls. Policies and practices may have to be altered in order to provide access. For example, a business that normally would not permit a customer to bring a pet on the premises must give access to a person with a service animal.

A public accommodation may deny an auxiliary aid or service only if it can demonstrate that it would fundamentally alter the nature of the service, or would constitute an undue burden (a significant difficulty or expense). If the public accommodation is able to demonstrate that there is a fundamental alteration or an undue burden in the provision of a particular auxiliary aid or service it must, however, be prepared to provide an alternative auxiliary aid or service, where one exists. 28 C.F.R. § 36.303(f).

Whether or not a particular auxiliary aid or service constitutes an “undue burden” depends on a variety of factors, including the nature and cost of the auxiliary aid or service and the overall financial and other resources of the business. The undue burden standard is intended to be applied on a case-by-case basis. Undue burden is not measured by the amount of income the business is receiving from a client, patient or customer. Instead, undue burden is measured by the overall financial impact on the whole entity. Therefore, it is possible for a business to be responsible for providing auxiliary aids or services even if it does not make a sale or receive income from a deaf or hard of hearing customer, if the cost would be an undue burden on its overall operation. We are not aware of any court decision that has held that providing interpreter services resulted in undue burden.

[How to File an ADA Complaint with the US Department of Justice?](https://www.ada.gov/filing_complaint.htm)

Retrieved from: https://www.ada.gov/filing_complaint.htm

You can file an Americans with Disabilities Act complaint alleging disability discrimination against a State or local government or public accommodation (private business including, for example, a restaurant, doctor’s office, retail store, hotel, etc.). A complaint can be filed online using the link below, or by mail, or by fax.

To file an ADA complaint online:

<https://www.ada.gov/complaint/>

Instructions for submitting attachments are on the form.

To file an ADA complaint by mail:

US Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425 NYAV
Washington, D.C. 20530

To file an ADA complaint by fax: (202) 307-1197

Please keep a copy of your complaint and the original documents for your own records.

You will need to provide the following information:

- A. Your full name, address, the telephone numbers where we can reach you during the day and evening, and the name of the party discriminated against (if known);
- B. The name and address of the business, organization, institution, or person that you believe has committed the discrimination;

- C. A brief description of the acts of discrimination, the dates they occurred, and the names of individuals involved;
- D. Other information you believe necessary to support your complaint, including copies (not originals) of relevant documents; and
- E. Information about how to communicate with you effectively. Please let us know if you want written communications in a specific format (e.g., large print, Braille, electronic documents) or require communications by video phone or TTY.

[Civil Monetary Penalties Inflation Adjustment Under Title III](https://www.ada.gov/civil_penalties_2014.htm)

Retrieved from: https://www.ada.gov/civil_penalties_2014.htm

On March 28, 2014, the Department of Justice issued a Final Rule that adjusts for inflation the civil monetary penalties assessed or enforced by the Civil Rights Division, including civil penalties available under title III of the Americans with Disabilities Act of 1990 (ADA). For the ADA, this adjustment increases the maximum civil penalty for a first violation under title III from \$55,000 to \$75,000; for a subsequent violation the new maximum is \$150,000. The new maximums apply only to violations occurring on or after April 28, 2014. This Final Rule is a non-discretionary agency action made pursuant to Section 4 of the Federal Civil Penalties Adjustment Act of 1990, as amended (Adjustment Act), which mandates the Attorney General to adjust for inflation the civil penalties assessed or enforced by the Department of Justice. The amounts of the adjustment were determined according to a specific mathematical formula set forth in Section 5 of the Adjustment Act. The previous adjustment under the ADA occurred in 1999.

[Tax Benefits for Businesses Who Have Employees with Disabilities](https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities)

Retrieved from: <https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities>

Businesses accommodating people with disabilities may qualify for some of the following tax credits and deductions. More detailed information may be found in the IRS publications referenced.

Disabled Access Credit

The Disabled Access Credit provides a non-refundable credit for small businesses that incur expenditures for the purpose of providing access to persons with disabilities. An eligible small business is one that earned \$1 million or less or had no more than 30 full time employees in the previous year; they may take the credit each and every year they incur access expenditures. Refer to Form 8826, Disabled Access Credit (PDF), for information about eligible expenditures.

Barrier Removal Tax Deduction

The Architectural Barrier Removal Tax Deduction encourages businesses of any size to remove architectural and transportation barriers to the mobility of persons with disabilities and the elderly. Businesses may claim a deduction of up to \$15,000 a year for qualified expenses for items that normally must be capitalized. Businesses claim the deduction by listing it as a separate expense on their income tax return. Also, businesses may use the Disabled Tax Credit and the architectural/transportation tax deduction together in the same tax year, if the expenses meet the requirements of both sections. To use both, the deduction is equal to the difference between the total expenditures and the amount of the credit claimed.

Work Opportunity Tax Credit

The credit provides employers incentives to hire qualified individuals from these target groups. The maximum tax credit ranges from \$1,200 to \$9,600, depending on the employee hired and the length of employment. The credit is available to employers for hiring individuals from certain target groups who have consistently faced significant barriers to employment. This includes people with disabilities and veterans.

For more information on claiming this credit, go to the [Work Opportunity Tax Credit](#) page and the changes to the credit from the Protecting Americans from Tax Hikes Act of 2015 (PATH Act).

Additional information about these business topics concerning accommodations for individuals with disabilities are in:

- Publication 535, Business Expenses
- Form 8826, Disabled Access Credit (PDF)
- Form 5884, Work Opportunity Credit (PDF)
- Form 3800, General Business Credit (PDF)
- Instructions for Form 3800, General Business Credit
- Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit (PDF)
- Instructions for Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit

There is also a wide array of tax benefits available to persons with disabilities, ranging from standard deductions and exemptions to business and itemized deductions to credits. Information about these issues is in Publication 3966, [Living and Working with Disabilities](#) (PDF).

[Disabled Access Credit](#)

Retrieved from: <https://www.irs.gov/pub/irs-pdf/f8826.pdf>

| | | | | |
|---|--|---|-----------|---|
| Form 8826 (Rev. September 2017) Department of the Treasury Internal Revenue Service | | Disabled Access Credit ▶ Attach to your tax return. ▶ Go to www.irs.gov/Form8826 for the latest information. | | OMB No. 1545-1205 Attachment Sequence No. 86 |
| Name(s) shown on return | | Identifying number | | |
| 1 | Total eligible access expenditures (see instructions) | 1 | | |
| 2 | Minimum amount | 2 | \$ 250 | 00 |
| 3 | Subtract line 2 from line 1. If zero or less, enter -0- | 3 | | |
| 4 | Maximum amount | 4 | \$ 10,000 | 00 |
| 5 | Enter the smaller of line 3 or line 4 | 5 | | |
| 6 | Multiply line 5 by 50% (0.50) | 6 | | |
| 7 | Disabled access credit from partnerships and S corporations | 7 | | |
| 8 | Add lines 6 and 7, but do not enter more than \$5,000. Partnerships and S corporations, report this amount on Schedule K. All others, report this amount on Form 3800, Part III, line 1e | 8 | | |
| For Paperwork Reduction Act Notice, see instructions. | | Cat. No. 12774N | | Form 8826 (Rev. 9-2017) |

**Under General Instructions, refer to Eligible Access Expenditures item (2).

Form 8826 (2005)

General Instructions

Section references are to the Internal Revenue Code.

Purpose of Form

Eligible small businesses use Form 8826 to claim the disabled access credit. This credit is part of the general business credit.

A partnership or S corporation that is an eligible small business completes Part I of the form to figure the credit to pass through to its partners or shareholders. Electing large partnerships include this credit in "general credits."

Definitions

Eligible Small Business

For purposes of the credit, an eligible small business is any business or person that:

- Had gross receipts for the preceding tax year that did not exceed \$1 million or had no more than 30 full-time employees during the preceding tax year and
- Elects (by filing Form 8826) to claim the disabled access credit for the tax year.

For purposes of the definition:

- Gross receipts are reduced by returns and allowances made during the tax year,
- An employee is considered full time if employed at least 30 hours per week for 20 or more calendar weeks in the tax year, and
- All members of the same controlled group and all persons under common control generally are considered to be one person—see section 44(d)(2).

Eligible Access Expenditures

For purposes of the credit, these expenditures are amounts paid or incurred by the eligible small business to **comply with applicable requirements** under the Americans With Disabilities Act of 1990 (Public Law 101-336) as in effect on November 5, 1990.

Eligible access expenditures include amounts paid or incurred:

1. To remove barriers that prevent a business from being accessible to or usable by individuals with disabilities;
2. To provide qualified interpreters or other methods of making audio materials available to hearing-impaired individuals;
3. To provide qualified readers, taped texts, and other methods of making visual materials available to individuals with visual impairments; or

4. To acquire or modify equipment or devices for individuals with disabilities.

The expenditures must be reasonable and necessary to accomplish the above purposes.

Eligible expenditures do not include expenditures in 1 above that are paid or incurred in connection with any facility first placed in service after November 5, 1990.

Eligible access expenditures must meet those standards issued by the Secretary of the Treasury as agreed to by the Architectural and Transportation Barriers Compliance Board and set forth in regulations. See section 44(c) for other details.

Disability. For an individual, this means:

- A physical or mental impairment that substantially limits one or more major life activities,
- A record of such an impairment, or
- Being regarded as having such an impairment.

Retrieved from: <https://www.ada.gov/form8826.pdf>

Important Contact Information

National Association of the Deaf (NAD)
People Inc.

Deaf Access Service, an affiliate of



nad.info@nad.org

(301) 587-1788 (Purple/ZVRS)

(301) 328-1443 (Sorenson)

(301) 338-6380 (Convo)

www.wnydas.org

(716) 833-1637

US Department of Justice – ADA

www.ADA.gov

(800) 514-0301 (Voice)

(800) 514-0383 (TTY)