



Federal Emergency Management Agency

Washington, D.C. 20472

1. **Date Published:** October 26, 2000
2. **Response and Recovery Directorate Policy Number:** 9525.5
3. **Title:** Americans with Disabilities Act (ADA) Access Requirements
4. **Purpose:** This policy provides guidance in determining the eligibility of costs for federally required ADA access compliance associated with Public Assistance (PA) program grants.
5. **Scope and Audience:** This policy is applicable to all major disasters and emergencies declared on or after the publication date of this policy. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations for the PA program.
6. **Background:**
 - A. In order to eliminate discrimination against individuals with disabilities, Congress enacted the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) in 1990. Titles II and III of ADA are relevant to the PA program. 28 CFR Parts 35 and 36 provide further guidance.
 - B. 28 CFR addresses alteration to existing facilities. It defines an alteration as a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof. It further states that alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts of elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. For the purposes of this FEMA policy on the application of the PA program to post-disaster reconstruction, the phrase, "ADA relevant repair," will be used in place of the word, "alteration."
 - C. The PA program, under Sections 406 (a) and 406(e)(1) of the Stafford Act, authorizes FEMA to fund the cost of repairing, restoring, reconstructing, or replacing a public or private nonprofit facility in conformance with applicable codes, specifications and standards. This policy provides guidance on the applicability of federal ADA provisions to PA grant projects.

7. Policy:

A. New Facilities. A new facility receiving FEMA funding and constructed as a replacement facility, an improved project, or an alternate project must be designed and constructed to be readily accessible to and usable by individuals with disabilities.

- 1) Exceptions: There are two exceptions for a new facility.
 - a) For some eligible private nonprofit (PNP) applicants, exceptions are available for installation of elevators in small buildings less than three stories or less than 3,000 square feet per story. These exceptions do not apply to any publicly owned or operated facility.
 - b) Full compliance is not required when an entity, private or government, can demonstrate that it is structurally impractical to meet the requirements.
- 2) Other than the exceptions in Paragraph 7.A.1), FEMA will fund compliance with reasonable ADA requirements in a new facility. This is true even when such compliance was absent in the original facility, as long as the applicant was not cited for the violation.
- 3) A new facility that is funded as an improved or an alternate project is limited to the eligible funding for the original facility even though the new facility might have to comply with additional ADA requirements.

B. Existing Facilities. When ADA relevant repairs are made to any area of an existing facility, they must be done to meet the needs of disabled individuals. Only ADA relevant repairs trigger accessibility requirements; not all repairs are ADA relevant repairs.

- 1) ADA relevant repair: An ADA relevant repair is a repair to a damaged facility that affects or could affect the usability of the facility by the disabled (which is referred to as an "alteration" in the ADA).
 - a) Repairs of structural components of flooring, walls, partitions, or load-bearing elements are considered ADA relevant repairs.
 - b) Alterations to windows, hardware, controls, electrical outlets, and signage and repair of façades (such as dry wall, plaster, facial brick, etc.), whether interior or exterior, are not considered ADA relevant repairs.
 - c) Items such as normal maintenance, re-roofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not considered ADA relevant repairs unless they affect the usability of, or access to, an area containing a primary function.

- 2) Primary Function Areas. This area is where a major activity occurs for which the facility is intended. Examples include the dining area of a cafeteria, the meeting rooms of a conference center, and public offices providing governmental services to the public. When ADA relevant repairs are made to the primary function area of a facility, there are some special requirements and considerations:
 - a) ADA relevant repairs to the damaged primary function area must meet ADA access requirements.
 - b) When ADA relevant repairs are made to a damaged primary function area, the path of travel, and restrooms, telephones, drinking fountains and similar service facilities serving the primary function area also must be made ADA accessible to the maximum extent feasible (subject to the limitations in Paragraph 7.B.2)d)).
 - c) Path of Travel. The accessibility requirement includes a "path of travel" to access the primary function area even though these areas may not be damaged. A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the repaired primary function area may be approached, entered, and exited and which connects the repaired primary function area with an exterior approach (including sidewalks, streets, and parking areas, and other parts of the facility). The "path of travel" also includes access to the service facilities (e.g., restrooms) serving the primary function area.
 - d) Funding Limitations. Funding for providing an accessible path of travel and accessible service facilities to a repaired primary function area may not exceed 20% of the total cost associated with the repair of the primary function area.
 - i) For calculation purposes, the total costs associated with repair of the primary function area also include the repair costs of the roof, heating/air conditioning/ventilating system, mechanical rooms, janitorial closets, locker rooms, private offices directly associated with the repair of the primary function area.
 - ii) When the funding of 20% is not adequate to meet ADA accessible path of travel and service facility requirements, the ADA access must be made to the maximum extent possible with the limited funds. Limited changes should be made in the following order of priority: accessible entrance, accessible route to the altered area, at least one accessible restroom for each sex or single unisex restroom, phones, drinking fountain, and other elements such as parking, storage, and alarms. See 28 CFR 36.403(g).
- 3) Non-primary Function Areas. If ADA relevant repairs are required during the repair of parts of a facility other than the primary function areas, they must be

done to provide ADA access. However, these repairs do not trigger the "path of travel and service facility" requirements like the ADA relevant repairs to a primary function area do.

a) If ADA relevant repairs are made to *damaged* walls, stairs, corridors, restrooms, etc. that also happen to provide access to and usability of the repaired primary function area, the cost of those repairs are eligible costs as non-primary function areas and are not charged against the 20% cap.

b) The costs of these repairs to non-primary function areas will not be added to the base rate noted in Paragraph 7.B.2)d) when calculating the maximum allowance for accessibility path of travel or service facility repairs.

C. Non-damaged areas. The non-damaged areas of a partially damaged facility are not required by Federal law to be reconstructed for ADA access unless they are the "path of travel or service facility" to a repaired primary function area requiring ADA relevant repairs.

D. Legal Violations. If the applicant was notified of being in violation of an ADA law or building code prior to the disaster and was required to bring the facility into compliance, then triggered accessibility requirements related to the violation will not be eligible costs.

E. Codes and Standards.

1) ADA accessibility requirements in this policy refer to federal requirements. Costs for additional State and local ADA requirements may be eligible on a case-by-case basis if they are found reasonable. In any event, path of travel costs may not exceed 20% of the cost of repair to the primary function area.

2) The repair of existing facilities generally does not have to meet the codes and standards for ADA compliance for new construction.

F. Ineligible Repairs: If the applicant triggers ADA requirements by engaging in repairs that are not eligible for PA program funding, the cost of those ADA changes are not eligible costs under the PA grant program.

G. Historic Preservation: There are some special provisions that apply when a repair would "threaten or destroy the historic significance of qualified historic buildings and facilities." Refer to Section 504(c) of the ADA and 28 CFR 36.405 for guidance.

8. Supersession: Relevant provisions of previous public assistance policy documents.

9. References: Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 93-288 as amended; and 44 CFR 206.226(b)(3).

10. Originating Office: Infrastructure Division, Response and Recovery Directorate.

11. Review Date: Five years from date of publication.

12. Signature:

Signed

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13. Distribution: Regional Directors, Regional and Headquarters R&R Division Directors.