

SECTION 3-6 ACCESSIBILITY REQUIREMENTS FOR PERSONS WITH DISABILITIES

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3-6-00 POLICY

This section sets forth policy and procedures for complying with the Architectural Barriers Act of 1968, 42 USC 4151-4156, also commonly referred to as Public Law 90-480, and as defined in the Federal Management Regulation (FMR) §102.76.60 through 102.76.95. The Architectural Barriers Act applies to any facility constructed, altered, leased, or financed with federal funds that is intended for use by the public or may result in employment of persons with disabilities.

If the construction or alteration commences, or the lease is entered into after May 8, 2006, the facility shall meet the Architectural Barriers Act Accessibility Standard, defined as Appendices C and D, 36 CFR 1191, ABA Chapters 1 and 2, and Chapters 3 through 10.

If the construction or alteration commences, or the lease is entered into before May 8, 2006, the facility must meet the Uniform Federal Accessibility Standards.

If plans and specifications for the construction or alteration of a facility were completed or substantially completed on or before May 8, 2006, the facility is permitted to meet the Uniform Federal Accessibility Standards provided the construction or alteration commences by May 8, 2008.

The Architectural Barriers Act Accessibility Standard and the Uniform Federal Accessibility Standards are available at the [United States Access Board website \(http://www.access-board.gov\)](http://www.access-board.gov).

3-6-10 PROCEDURES

A. ASSESSING COMPLIANCE

1. All projects shall be reviewed for compliance with the applicable standard during the review of contract drawings and specifications (for all design phases), and again at the time of the final on-site inspection of the completed facility.
2. The review of contract drawings and specifications and/or inspection during construction at serves the following purposes:
 - a. It provides assurance that project plans are being reviewed closely for adherence to prescribed requirements at appropriate design stages.
 - b. It provides documentation in the project file that the facility meets mandatory requirements, or that the contract drawings reflect certain omissions or deviations from the standards.
 - c. It serves as a guide to take corrective action by the project architect in instances where the contract drawings do not conform completely to the standards.
 - d. Where historic properties may be adversely affected, early consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation is advisable, to avoid delays in the design process.
3. To meet the record keeping responsibilities of FMR §102-76.95, it is recommended that the applicable portions of the standard be used as a checklist. A completed copy of the checklist should be placed in the project file when the design documents are completed and a second

completed checklist when construction is completed. A notation in the left margin of "Y" (yes), "N" (no) or "NA" (not applicable) opposite each item in the checklist is sufficient.

B. EXCEPTIONS:

1. Exceptions for specific facilities as defined in FMR §102-76.60 are:
 - a. Privately owned residential facilities unless leased by the Government for subsidized housing programs, and
 - b. Any facility on a military reservation designed and constructed primarily for use by able-bodied military personnel.
2. Exceptions when the costs of alterations to meet accessibility are disproportionate to the costs of the overall alterations are defined in FMR §102-76.70 through 102-76.85. Documentation shall be maintained in the project file demonstrating the basis of the disproportionate costs and the extent to which the standard is incorporated into the project.

C. WAIVERS

1. HHS and its OPDIVS cannot grant waivers to the requirements. The Administrator of General Services has the authority to waive or modify the standards in FMR § 102-76.65(a) on a case-by-case basis if the agency head submits a request for waiver or modification and the Administrator determines that the waiver or modification is clearly necessary.
2. All requests for waivers, supporting documentation, and notification of final action on requests shall be placed in the project file. Accessibility requirements cannot be waived in HHS facilities that are accredited by the Joint Commission on Accreditation of Healthcare Organizations.

3-6-20 GUIDANCE AND INFORMATION

- A. The Architectural Barriers Act (ABA) of 1968, 42 USC 4151 – 4156, establishes accessibility requirements for facilities designed, built, altered or leased with Federal funds.
- B. The Americans with Disabilities Act (ADA) of 1990 (42 USC 12204), establishes accessibility requirements for employment, public services, public accommodations and telecommunications. The Act does not directly cover Federal or federally funded facilities, which remain under the Architectural Barriers Act (ABA).
- C. 42 USC 4152 of the Architectural Barriers Act authorizes the Administrator of the General Services Administration (GSA), in consultation with the Secretary of the Department of Health and Human Services (HHS), to prescribe standards for the design, construction and alteration of buildings (other than residential structures, Department of Defense (DOD) and Postal facilities) to ensure accessibility by persons with disabilities.
- D. The U.S. Access Board issued the guidelines for both the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) requirements as the combined document, "The ADA and ABA Accessibility Guidelines for Buildings and Facilities" June 23, 2004. The guidelines issued by the U.S. Access Board are not legally enforceable but serve as baselines for meeting ADA and ABA accessibility requirements. Under the ABA, the "Uniform Federal Accessibility Standards" remained the applicable standard until GSA (along with DOD, HUD and USPS) issued new enforceable standards based on the U.S. Access Board's guidelines. With respect to the ADA, the guidelines issued by DOJ in 1991 remain the applicable enforceable standard.
- E. GSA issued the FMR §102-76 Design and Construction on November 8, 2005 containing the updated standard in Subpart C, Architectural Barriers Act effective May 8, 2006.