

Implementation of the Americans with Disabilities Act: Challenges, Best Practices, and New  
Opportunities for Success  
National Council on Disability  
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Executive Summary

Introduction

The Americans with Disabilities Act (ADA) has been a catalyst for significant progress in bringing about equality of opportunity for people with disabilities. It has spurred increased architectural accessibility, particularly in newly constructed buildings and facilities, an increase in accessible fixed-route public transportation in most locales, and readily available telecommunications services for people who are deaf or hard of hearing. Some effective responses to certain implementation issues can be considered best practices and can serve as models.

The other side of the picture depicts areas where it has been very difficult to bring about full or even partial implementation of the law by covered entities, and where a gap in expectations between people with disabilities and covered entities remains or has even widened. These intractable pockets of resistance to implementation exist under various titles of the ADA and can be either specific or broad in their scope. One example in the area of transportation is that stop announcements on public fixed-route bus systems remain inconsistent. A broader example under Title III is the ongoing widespread lack of implementation among such small businesses as restaurants, hotels, medical offices, and retail establishments.

Without minimizing the successes that have been achieved since the ADA's enactment in 1990, it is evident that progress cannot continue without addressing the underlying reasons some areas remain intractable and where the law has been implemented either sporadically or not at all. On one level, underlying factors such as a lack of appropriate and consistently available information and education about the ADA, cost concerns, and limited enforcement underlie virtually all the problem areas. On a deeper level, however, intractability in any given area or on any given issue seems to occur when these factors interact with one another and augment the already powerful stereotype that people with disabilities are fundamentally and deeply incapable and, of necessity, live lives that are separate from the rest of the population.

This is exemplified by indifferent voluntary compliance by smaller Title III entities with narrower profit margins when their concern about the potential cost of access combines with a perceived lack of information, uncertainty about achieving technical ADA compliance, and inadequate Federal Government enforcement. The prevalence of businesses operating in inaccessible buildings and not accommodating patrons makes it difficult for people with disabilities to go out and about, and participate and function in their communities. This, in turn, fuels widespread lack of awareness about disability in general and fosters a lack of knowledge about the extent to which disability is pervasive in the communities that businesses and other entities serve. Such lack of awareness perpetuates the view that people with disabilities do not represent a potential customer or client base and the attitude that "I don't have customers who need accommodation."

The same deeply embedded stereotype arguably is behind limitations placed on the law by decisions handed down by the U.S. Supreme Court. The ADA has produced mixed results in employment, in part because the Court has narrowed the definition of disability, thus denying civil rights protections to some people with disabilities who encounter workplace discrimination or who could increase their work performance with an accommodation. These cases, in combination with another Supreme Court decision that has placed limits on the circumstances under which attorneys can recover fees when they represent clients in discrimination cases under Title III of the ADA, has made it more difficult for people with disabilities to obtain representation, curtailing a major enforcement tool of the law.

While the recommendations that ultimately arose out of a national ADA stakeholder dialogue, research, and identified best practices might differ in detail and in target audience, they all seek to or actually do redress one or more of the underlying factors impeding implementation of the law. Taken together, the recommendations advocate for increasing the ready availability of ADA information, education, and technical assistance to all covered entities and people with disabilities; creating financial incentives and developing cost-sharing measures; or strengthening federal and private enforcement measures.

Disability community stakeholders recognized the need to break the cycle created by false assumptions and gaps in information, perceived implementation costs, and weak enforcement that perpetuates areas that have been intractable to implementation. The ADA's goal of promoting full community participation cannot be achieved without eliminating the perception that people with disabilities are a wholly separate group that exists functionally, practically, and conceptually apart from the rest of the population. The great attraction of the paradigm, referred to by some as *universality* and closely aligned with the movement for universal design, is that it envisions a physical, social, and economic environment that is designed for the entire range of human function, and this ideal transcends virtually every aspect of ADA implementation.

Many stakeholders recognized the active interface between the media and public perception, especially when stereotypes are involved. Moreover, public perception of the ADA has been greatly influenced by negative media portrayals that generally misrepresent the intent of the law and that recently have focused on the motives of individuals who bring multiple access lawsuits, rather than on the impact of successful ADA implementation. The disability community and other stakeholders recognized that this longstanding problem calls for a robust and creative strategy that will change the direction of reporting on the ADA and will use the media to correct rather than perpetuate stereotypes.

## Key ADA Implementation Issues

### Title I – Employment

In addition to the negative impact of the U.S. Supreme Court rulings that narrowed the definition of disability, the right to reasonable accommodation in the workplace has not been consistently understood or honored by either employers or the courts. Providing reasonable accommodations for applicants and employees with disabilities should become a standard and ordinary cost of doing business. Decisions about accommodations should not rest with a departmental level manager who is concerned about cost overruns. Rather, businesses should adopt an accommodation policy that sets forth the steps required to request an accommodation and establishes an entity-wide fund that can be used to pay for accommodations and related costs.

A crucial, unmet need related to ADA Title I implementation is ongoing, targeted training for employers on all aspects of Title I of the ADA , as well as disability awareness for employers at all levels. People with disabilities require similar training in order to know their employment rights and to advocate successfully for themselves.

The movement for flexibility in the workplace brings people with disabilities to the center of the discussion in which the workplace needs of all employees are taken into account. The ADA establishes the principle of reasonable accommodation, which can serve as both a guide and the moral authority for developing methods to support the needs of workers with and without disabilities.

The Internal Revenue Service (IRS) and other federal agencies concerned with implementation of the ADA should launch a new educational campaign that informs businesses about the financial incentives and tax credits associated with hiring individuals with disabilities. This information should be widely disseminated in tax filing information and through other channels.

#### Titles II and III – Public and Private Transportation

While public transportation has achieved significant levels of accessibility, ongoing implementation issues include lack of sufficient resources for ADA transportation enforcement and lack of funding and resources for ADA implementation at the local level. A systemic organizational challenge is the need for ongoing transit staff training on ADA requirements for all modalities, and a focus on good customer service. To achieve meaningful implementation, disability access must be integrated into all the components of large transit organizations.

Increasing demands for ADA paratransit is creating new implementation challenges, including concerns that strict eligibility assessments may be inadvertently discouraging riders from trying the fixed-route system for fear of losing paratransit eligibility. Other problems include poor access to transportation in rural areas, lack of accessibility to privately operated over-the-road buses, accommodating oversized wheelchairs, stop announcements on fixed-route bus systems, ensuring that the gap between the train car and the platform does not exceed ADA specifications, elevator maintenance, and the need for adequate securement devices.

### Title III – Public Accommodations

Significant problems remain in achieving meaningful implementation of the ADA by small businesses. The Department of Justice (DOJ) and others have created and disseminated extensive technical assistance materials designed to help businesses comply with the law, yet businesses indicate that they do not know where to go for reliable information about the ADA . Businesses express frustration that they cannot know with certainty what the ADA requires of them, and they resent that they might be sued without being informed beforehand about accessibility and other ADA problems. Furthermore, many have difficulty equating access with discrimination. On the other hand, people with disabilities think that widespread and ongoing lack of access to many small businesses is indefensible 16 years after enactment of the law. They interpret the lack of compliance to mean that businesses do not recognize or value people with disabilities as bona fide customers or clients.

Poor implementation stems in part from the limited federal enforcement role established in the ADA . DOJ is not *required* to enforce every Title III complaint it receives; thus, as a practical matter, people with disabilities have only two methods available to them to achieve Title III compliance by small businesses: They can file a private lawsuit or request that the business voluntarily take steps that are readily achievable to make its facility accessible.

While businesses indicate that they would comply with the ADA if they were informed about access and other problems, the experience of many people with disabilities is that their initial requests for barrier removal are met with misunderstanding, condescension, or hostility, or are simply ignored. Organized efforts by the disability and small business community to educate businesses and request voluntary compliance have also been met with indifference. For example, 18 months after such a collaborative effort began in San Francisco , less than 3 percent of 2,200 businesses that were offered information and assistance responded, and less than 0.02 percent requested grants that were offered by the group for accessibility surveys or modification planning. The group was forced to conclude that litigation achieved greater compliance with state and federal law and greater accessibility than a nonlitigious collaborative approach.

Practically speaking, however, many people with disabilities do not have the resources to file private lawsuits. Most private attorneys lack adequate knowledge about the ADA , and the U.S. Supreme Court has created strong disincentives by limiting the circumstances under which attorney fees can be recovered in ADA cases. As a result, Title III is overwhelmingly *underenforced* in most of the country. During 2005, 1,383 disability rights cases were filed in federal courts, including cases brought under Titles II, III, and IV of the ADA , as well as cases brought under the Individuals with Disabilities Education Act (IDEA). This is hardly a national “flood” of litigation, as the media suggest, especially in the face of acknowledged widespread noncompliance with the readily achievable barrier-removal provisions of the ADA .

Class action lawsuits against larger entities such as retail department store chains have been among the more successful cases of Title III litigation since the class action tool inherently tends to spread risk and potential relief among an entire class of plaintiffs. Unfortunately, the past few years also have brought problems in Title III class action lawsuits through the use of an overly expansive class definition of affected people with disabilities who were not adequately represented; the overbroad release of access claims under both federal and state laws, which foreclosed future litigation for years; and the binding of class members to architectural access standards that were below the undisputed minimum standards established in the ADA Accessibility Guidelines (ADAAG). These problems highlight the need for greater education and training for disability rights attorneys working in Title III, and for developing efficient ways to monitor against potential abuse and collusion in the use of national and regional Title III class actions.

Widespread Title III compliance cannot be achieved without business and public outreach, a visible and efficient administrative enforcement procedure, the wide availability of qualified accessibility expertise, and economic incentives such as tax and other credits.

#### Title IV – Telecommunications

Title IV has a financing mechanism that allows companies that are charged with providing telecommunications relay services (TRS) to benefit financially from the provision of these services. Since Title IV first went into effect in July 1993, relay consumers and telephone companies have enjoyed a cooperative relationship that has fostered innovative technologies and high service standards. These innovations and improved standards have been authorized by the Federal Communications Commission (FCC), the agency that bears responsibility for implementing Title IV. Recently, increased competition among companies entering the interstate relay business—many of which are not traditional telephone companies—has provided added stimulus for improving and enhancing relay products. Open rulemaking proceedings on every facet of relay services have provided extensive and unparalleled opportunities for consumers and providers to provide input on their needs and objectives, and have resulted in rulings that have enabled relay services to evolve along with the rapid pace of modern technologies.

Despite the considerable success of relay services, some implementation issues remain in the areas of training and awareness, funding, and service quality. Many potential relay users still are unaware of the existence of relay services or have not received training on how to use them, and there is a lack of knowledge about the availability and use of relay services. Some businesses and governmental agencies refuse to use relay services to exchange confidential information.

The traditional funding base is in jeopardy, as more services are provided over the Internet and there are no low-income subsidies for broadband access. Most state equipment distribution programs do not provide funding for the devices required to use high-tech relay services and there is no funding mechanism to reimburse providers for the

technical customer support needed to operate video equipment used with Video Relay Service (VRS). Interpreter shortages in many communities impede the effective provision of VRS.

No federal standards exist that assess the skills of communication assistants (CAs) and interpreters who provide Internet-based text and video relay services, and previous oversight mechanisms employed by the states do not work for Internet-based relay services. New TRS delivery methods that are Internet-based need the same level of oversight on the federal level as exists for traditional TRS on the state level. Furthermore, state relay services vary considerably in quality.

### Examples of ADA Best Practices

Well-established ADA best practices illustrate that successful implementation is both possible and practicable, and serve as models for other covered entities. The following models also directly address at least one of the underlying issues or stereotypes behind intractable implementation areas. They range from an aggressive top-down commitment to recognizing people with disabilities as a desirable market share, to a simple elimination of the pay discrepancy between transportation employees who work with people with disabilities and employees who work with the nondisabled population, to an intermediate agency that fills the information/education and technical assistance gap between employees and employers. The following examples meet specific structural and procedural criteria, and the entities engaging in the practice collect and publish quantitative outcome data that reveals the practical benefit for people with disabilities.

- Microtel Inns & Suites, the chain of newly constructed budget/economy hotels, offers ADAAG-compliant sleeping rooms, strong advertising, and significant staff training for franchise operators on serving customers with disabilities. The company reported gains in its 2004 bookings for ADA room nights across all distribution channels by nearly 275 percent over the previous year. In addition, net revenues for ADA room nights increased by more than 260 percent.
- Resolving discrepancies in pay between paratransit and fixed-route drivers resolves some of the chronic difficulties that persist in paratransit service, such as high driver turnover. Tri-Delta Transit in Antioch, California, made this change in the late 1990s and lowered paratransit driver turnover by 50 percent. In Wenatchee, Washington, Link Transit's average operator has driven for 10 years, compared with most paratransit systems, which have turnover of around 50 percent per year. This longevity has resulted in skilled drivers who rarely get lost, know nearly all their passengers, and operate at high productivity.
- The Job Accommodation Network (JAN) is a service of the Office of Disability Employment Policy (ODEP) of the U.S. Department of Labor (DOL). JAN's mission is to facilitate the employment and retention of workers with disabilities by providing employers, employment providers, people with disabilities, their family members, and other interested parties with information on job accommodations, self-employment and

small business opportunities, and related subjects. In a recent evaluation, JAN customers reported that implementation of worksite accommodations would significantly reduce the individual's level of limitation due to the disability. Further, JAN customers reported having made highly effective accommodations at very little or no cost.

### Key Recommendations

A complete list of ADA implementation recommendations for specific audiences can be found in Appendix F.

### Recommendations for Congress

- Congress must enact legislation that reverses the Supreme Court decisions narrowing the definition of disability so individuals with disabilities who were intended to be covered by the law are again eligible to use it to challenge discrimination.
- Congress must enact legislation that effects a statutory repair of *Buckhannon's* condition of a "judicially sanctioned" change in the parties' relationship for the recovery of attorney fees under Title III, so that attorney fee-shifting rules will apply if a Title III plaintiff or would-be plaintiff has been the catalyst for a public accommodation's coming into compliance with its Title III obligations.
- Congress must make compensatory damages available under Title III.
- Congress must establish a statutory minimum damages amount for the denial of access rights under Title III.
- Congress must provide specific funding and a mandate to DOJ and all technical assistance organizations, such as the ADA & IT Technical Assistance Centers, for outreach to chambers of commerce, Rotary Clubs, and other small business organizations, especially those serving rural areas and smaller towns. The assistance and cooperation of these business associations, as well as any local disability advocacy groups that work with small businesses, is needed to accurately inform businesses of their obligation to comply with Title III, to disseminate technical resource information, and to help lower the level of tension and fear in the business community.
- Congress must provide additional resources for enforcement of the ADA transportation provisions.

### Recommendations for Federal Agencies

- The Equal Employment Opportunity Commission (EEOC), DOL, Small Business Administration (SBA), and other federal agencies concerned with employment of people with disabilities should acknowledge the substantial need for ADA training by employers at all levels and should join forces to create a campaign that responds to this need.

- Key federal agencies that are charged with a role in enforcement of the ADA should join in a collaborative effort to fund a substantial nationwide ADA training initiative for people with disabilities.
- The EEOC, DOL, SBA, and other federal agencies concerned with employment of people with disabilities; business trade and membership organizations such as regional chambers of commerce and Society for Human Resource Management (SHRM); and disability organizations should collaborate on development and dissemination of model policies for establishing entity-wide funding mechanisms that can be used by divisions, departments, and cost centers to pay for accommodations.
- Key federal agencies charged with a role in enforcement of the ADA—for example, EEOC, DOJ, and the Departments of Health and Human Services (HHS), DOED, and Housing and Urban Development (HUD)—should establish a center of excellence either within their agency or through a qualified contractor. Each center’s mission would be to conduct research and collect information about effective methods of ADA implementation related to the agency’s sphere of concern, rigorously evaluate those methods to determine their quantifiable impact on people with disabilities, and report and widely disseminate results that can serve as models.
- DOJ should devote substantially more resources and time to investigation of Title III complaints, especially those regarding small businesses, in light of widespread noncompliance by these covered entities.
- Key federal agencies charged with a role in enforcement of the ADA, disability organizations, and other leaders and experts in accessibility should partner with entities such as the National Association of State Fire Marshals, city departments of health, mortgage and construction lenders, and associations of city and county government to identify legislative, regulatory, and other methods to embed ADA information, incentives, and, where appropriate, penalties, in their interactions with Title III covered entities.
- ADA federal enforcement and allied agencies—for example, the Access Board and the National Institute on Disability and Rehabilitation Research (NIDRR)—should join forces to commission research (e.g., focus groups, surveys, interviews) designed to elicit structured responses from a variety of Title III entities about the extent to which specific technical assistance and informational materials that are currently available from DOJ and others provide the ADA implementation guidance they seek, and, as appropriate, make specific recommendations for content, formats, and distribution mechanisms that would meet their needs.
- The FCC should accelerate approval for new relay technologies and should establish clear guidelines to govern new technologies at the time they are approved.
- The FCC must include Internet-based providers among the categories of companies that must contribute to state and interstate relay support in order to ensure the viability of



relay funding and to distribute costs fairly among all subscribers of communication services.

#### Recommendations for Legal Advocates

- Continue monitoring for litigation abuse, but also explore strengthening the current system by creating the possibility of recovering attorney fees for raising reasonable objections to national and regional class action settlements.
- Develop ways to link the disability class action notice that is sent to state and federal officials to the actual notice that is sent to cross-disability legal groups and to Protection and Advocacy agencies in all affected states.
- Educate the judiciary concerning the need for vigilance on national ADA class action settlements that would allow public accommodations to avoid or water down ADAAG requirements and broadly bind an overinclusive class of people with disabilities to a settlement that gives many of them inadequate or no relief.

#### Recommendation for Collaboration Among Businesses, the Disability Community, and Professional Organizations and Associations

- As a condition of ongoing licensing, everyone involved in design, construction, engineering, landscape architecture, architecture, and city planning should be required to take universal design courses that include explanations of the ADAAG and access codes and standards, and these courses should be offered through continuing education programs. Sponsorship should be provided by state and national professional organizations such as the Building Officials and Code Administrators International, Inc., known as the International Code Council (ICC), and the American Institute of Architects (AIA).

#### Recommendation for Business Organizations and Associations

- Leading business associations such as the U.S. Chamber of Commerce and the Council of Better Business Bureaus should endorse and support a new ADA education project with their members. This would involve notifying members about the ADA through mailings, providing information on their respective Web sites and at conferences and regional and national meetings, and informing them that the organization has the capacity to distribute ADA implementation materials published by DOJ and other federal agencies.

#### Recommendation for Disability Community Organizations and Advocates

- The leaders of local independent living centers and other disability organizations should seek out leaders in culturally diverse neighborhoods to hold discussions on ADA implementation and to understand the needs of citizens and businesses. The objective is to inform leaders about the benefits of the ADA and build partnerships that provide

mutual benefit for the disability and culturally diverse communities. The goals are for local leaders to demonstrate that the ADA can be implemented in a meaningful way in their communities, to promote implementation, and to serve as a model for others.