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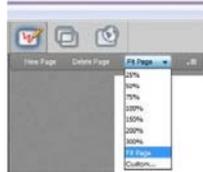
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Federal Facilities & the Architectural Barriers Act Accessibility Standard (ABA): "A Refresher"

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Presenters

U.S. Access Board



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Session Agenda

Part I
ABA Standards

Part II
ABA Enforcement Process

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Part I
ABA Standards

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Architectural Barriers Act of 1968

- Federal government building requirement (differs from the ADA)
- Enforced by the Access Board

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ABA Standards

Federal facilities covered

- Intended for use by the public OR may result in the employment or residence of individual with disabilities
- Constructed or altered by, or on behalf of
- Leased in whole or in part
- Financed by a grant or loan



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ABA Standards

“Financed in whole or in part by a grant or a loan made by the United States, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.”

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Rehabilitation Act

- Rehabilitation Act §504 covers access to federally funded/conducted programs & requires compliance with accessibility standards at time of construction
- “Program access requirements” under the rehab act may require changes to “existing facilities” if no other option is available - not the ABA

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Rehabilitation Act

Operational and policy issues, such as emergency evacuation plans and use of service animals are covered by the program access aspect of the Rehab Act, not the ABA.



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ABA Standard Setting Agencies

Architectural Barriers Act Accessibility Standard (ABAAS) is the name of the ABA Standards as specified in:

- General Services Administration (GSA) Federal Management Regulation
- US Postal Service notice
- Department of Defense (DOD) policy memorandum

HUD still using UFAS



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ABA Standard Setting Agencies

The GSA ABA Standards cover the vast majority of Federal Executive Branch agencies.



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Differences between ABA and ADA Standards

1. Modifications and Waivers (§ F103)
2. Some Definitions (§ F106.5)
3. Employee Work Areas
4. Additions (§ F202.2)
5. Leased Facilities Section (§ F202.6)
6. Existing Elements (§ F203.2)
7. Elevator Exceptions (§ F206.2.3)
8. Outdoor Developed Areas on Federal Lands
9. Military Exclusions

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Modifications and Waivers

AUTHORIZED UNDER THE ABA

- Administrator of the General Services Administration
- Secretary of the Department of Housing and Urban Development
- Secretary of the Department of Defense
- United States Postal Service

“to modify or waive the accessibility standards for buildings and facilities covered by the Architectural Barriers Act on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned.”

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Definitions

- Related to Outdoor Developed Areas - camp shelter, camping facility, camping unit, outdoor constructed feature, picnic facility, picnic unit, trail, trailhead, and viewing area
- Joint use
- Lease
- Military installation

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Employee Work Areas

ABA Statute:

§4151. "Building" defined:

As used in this chapter, the term "building" means any building or facility [...] the intended use for which either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons,...

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Employee Work Areas

Example:

The ADA would require a research laboratory (not used by students, i.e. the public) to only provide "approach, entry, and exit" or, if over 1000 sq. ft., an accessible common use circulation paths in the work area

An ABA research laboratory would include.....

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Employee Work Areas

- Accessible entry door including security issues
- Accessible route throughout the space
- 5% of work surfaces to be accessible
- 5% of sinks to be accessible
- All controls and operable part to be accessible including: switches, electrical outlets, gas controls, fume hoods
- Accessible emergency eye wash and shower stations

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Additions

- Where an addition to a building is constructed, the following elements must be altered in the existing building when they serve the addition, but are not provided in it -
- Accessible Route
- Entrance
- Toilet and Bathing Facilities
- Public Telephones
- Drinking Fountains

(There is NO cost cap for these items)

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Leased Facilities

“Buildings and Facilities for which new leases are negotiated by the Federal government ...” (§F202.6)

- Joint use areas
- Accessible route
- Toilet facilities
- Parking (where provided)

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Leased Facilities

Other elements & spaces where provided

- Drinking fountains
- Fire alarms
- Public telephones
- Dining and work surfaces
- Assembly areas
- Sales and service counters
- Depositories, vending and change machines

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Leased Facilities

Accessible routes required to connect to Primary Function areas

(as defined by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, and the United States Postal Service)

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Leased Facilities

**Primary Function Area -
“An area that contains a major activity for which the leased facility is intended”**

Includes: areas where services are provided to customers or the public, offices and other work areas

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Leased Facilities

Disproportionality does NOT apply in alterations completed by a Federal entity to meet the leasing requirements of §F202.6

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Leased Facilities

Definitions

Lease: Any agreement which establishes the relationship of landlord and tenant.

Joint Use: Interior or exterior rooms, spaces, or elements that are common space available for use by all occupants of the building. Joint use does not include mechanical or custodial rooms, or areas occupied by other tenants.

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Leased Facilities

Exceptions -

- Facilities used by Federal officials servicing disasters
- OR leases for ONLY 12 months or less provided that the lease may not be extended or renewed

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Existing Elements

§F203.2 Existing Elements

Elements in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended shall not be required to comply with these requirements unless altered.

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Elevator Exceptions

F206.2.3 Multi-Story Buildings and Facilities

- Requires vertical access in multi-story buildings and facilities
- NO exception for buildings with less than three stories or less than 3000 square feet per story (as included for entities covered under title III of the ADA)

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Outdoor Developed Areas

- New provisions added for trails, camping and picnic facilities, viewing areas, and beach access routes
- Includes several exceptions for “accessible routes” in these areas and new provisions for -
 - Outdoor recreation access routes
 - Beach access routes



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Outdoor Developed Areas

- F244 Camping Facilities
 - F245 Picnic Facilities
 - F246 Viewing Areas
 - F247 Trails
 - F248 Beach Access Routes
 - 1011 – 1019 Technical Requirements
- (See archived webinars on this subject)

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Military Exclusions

The ABA excludes “any building or facility on a military installation (including Reserve and National Guard facilities owned by or under the control of the Department of Defense) designed and constructed primarily for use by able bodied military personnel.”

(Exclusion also covers specific “elements” used exclusively such as parking spaces in a lot used by both “able bodied military personnel” and civilians)

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Military Exclusions

DOD Secretary of Defense Policy
Memorandum,
October 31, 2008:



“...nevertheless, since the intended use of such excluded facilities may change with time or in emergencies, compliance with these DOD Standards is recommended to the maximum extent that is reasonable and practicable without degrading the facility's military utility.”

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Military Exclusions

Military Installation.

“A base, camp, post, station, yard, center, homeport facility for any ship, or other activity or operation under the jurisdiction of the Department of Defense, including any leased facility. Military installation does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects. Multiple, contiguous, or collocated bases, camps, posts, stations, yards, centers, or home ports shall not be considered as constituting a single military installation.”

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Part II

ABA Enforcement Process

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Who enforces ABA compliance?

- Complaints that facilities are not accessible are handled by the **Enforcement Section of the Office of General Counsel**.
- Staff within the Enforcement Section take each complaint through a **multi-step investigation and enforcement process**.

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Starting the Enforcement Process

Submit a written complaint with the following information:

- the name and address of the facility; and
- complaint allegations (a brief description of the access problems or barriers); and
- additional information about the facility, such as when it was built or known sources of Federal funding; photographs are helpful but not necessary.

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How to File a Complaint

- A complaint must be filed **in writing**.
- **No special format is required**, forms are available through the Board brochure, "It's Your Right", or on-line.
- Personal information, including one's name, is optional and, where provided, **is kept confidential**; complaints may also be filed anonymously.
- Enforcement staff responds to complainant **within 5 days**, and maintains contact throughout the process.

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How is a Complaint Investigated?

- Step 1. Conduct a preliminary analysis
- Step 2. Open an investigation
- Step 3. Determine jurisdiction
- Step 4. Has a violation occurred?
- Step 5. Determine the appropriate action
- Step 6. Follow-through required for mandatory corrective action
- Step 7. Close the complaint

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Step 1. Conduct a Preliminary Analysis

Staff must first determine whether the facility in question may be covered by the ABA.

- **If yes**, staff open a complaint, send the complainant an acknowledgment letter and send the agency involved a letter of inquiry.
- **If no**, staff do not open a complaint, inform the complainant accordingly, and, if appropriate, advise the complainant of another accessibility law that may apply and provide appropriate referral information.

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Step 2. Open an Investigation

After determining that the ABA may cover the facility in a complaint...

- Open an investigation into the alleged violation
- Notify the appropriate agency of the complaint and complaint allegations, and obtain jurisdictional and other information about the facility
- Send the complainant an acknowledgement letter which includes: the complaint number, the staff contact information, and other relevant information about the Board, the complaint investigation process and the ABA

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Step 3. Determine Jurisdiction

Staff **determine whether the facility is covered by the ABA.**

To make this determination, a **three-pronged test** is used.

Was this facility

1. constructed or altered by or on behalf of, or leased in whole or in part by, the United States?
2. Federally funded?
3. after the effective date the ABA (August 12, 1968)?

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Step 4. Has a Violation Occurred?

Staff must now determine if a violation of the ABA has occurred.

- Specifically, they determine if the element of the facility included as a complaint allegation is inconsistent with the applicable Federal accessibility standards.
- In order to make this determination, staff review the complaint allegations, the applicable Federal accessibility standards, all available materials, and consult as necessary with other Board staff.

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Step 5. Determine the Appropriate Action

When staff have determined that the facility is covered by the ABA and that there is a violation of the applicable Federal accessibility standard -

- **Mandatory corrective action** is required before the complaint is closed.

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Step 5. Determine the Appropriate Action

When staff determine that the facility is not covered by the ABA or that there is no violation...

- the agency may agree to take **voluntary corrective action**
- or, if appropriate, staff provide **referral** information to the complainant

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Step 6. Follow-Through Required for Mandatory Corrective Action

When staff find that a violation has occurred...

- the agency **must submit a corrective action plan** containing a **timeframe for plan implementation**.
- staff **review the proposed plan and approve it after** determining that the plan is correct, comprehensive, and timely.

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Step 6. Mandatory Corrective Action

Once the corrective action plan has been approved,

- **Staff notify the complainant and agency** when the corrective action plan is approved; and
- **Monitor implementation** of the corrective action until the agency provides verification of completion (e.g., photographs, and/or architectural or dimensioned drawings.)

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Step 7. Close the Complaint: Mandatory Corrective Action Cases

After verifying that the agency's corrective actions are completed

- **notify the complainant in writing** of the final actions taken and
- **give them 15 days to provide contradictory information.**
- If no contradictory information is forwarded by the complainant, staff **close the case and notify the agency**

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Step 7. Close the Complaint: Referral or Voluntary Corrective Action Cases

Staff also close the case where **no ABA coverage or no violation** of the applicable Federal accessibility standard is found.

- **Referral:** if staff determine that another accessibility law may apply, they will provide the complainant with referral information.
- **Voluntary Corrective Action (VCA):** some agencies voluntarily agree to take corrective action to remove an accessibility barrier.

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ABA Complaint Trends

Most Common -

- Facility Types
- Barriers to Accessibility
- Complaint referrals

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**ABA Complaints -
Most Common Facility Types**

- United States Post Offices
- Offices Buildings/Suites
- Recreational
- Educational
- Health Care
- State/Local Government
- Courthouses & Other Judicial

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**Most Common Barriers
to Accessibility**

- Accessible routes
- Accessible parking
- Entrances
- Interior doors
- Toilet rooms

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Most Common Complaint Referrals

- Americans with Disabilities Act
- Section 504 of the Rehabilitation Act of 1973
- Fair Housing Act
- Section 501 of the Rehabilitation Act of 1973
- Other

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Questions?

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