

Reclamation Manual

Directives and Standards

Subject:	Nondiscrimination on the Basis of Disability in Federally Conducted Programs, Activities, and Services (Accessibility Program)
Purpose:	To standardize and clarify requirements to ensure compliance with nondiscrimination laws covering persons who have disabilities for consistent implementation throughout the Bureau of Reclamation. The benefits of this Directive and Standard (D&S) are twofold: (1) public access to, and benefit from, programs, activities, and services; and (2) clarification of roles and responsibilities.
Authority:	Architectural Barriers Act (ABA) of 1968; Section 504 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act); 43 Code of Federal Regulations (CFR) Part 17, Subpart E - Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior (Department), March 5, 1987; and Executive Order (EO) 12250, Leadership and Coordination of Nondiscrimination Law, November 2, 1980. For a detailed list of regulations and policies refer to Appendix A.
Approving Official:	Deputy Commissioner – Policy, Administration and Budget
Contact:	Civil Rights Division, 84-11000

1. **Introduction.** Reclamation has responsibility under law and regulation to ensure that its programs, policies, services, and activities do not discriminate against persons with disabilities. Reclamation must not exclude from nor deny services to individuals with disabilities, segregate them, nor otherwise treat them differently. Under Federal law and regulation, Reclamation must ensure all programs, activities, services, buildings, and facilities are accessible to, and usable by, individual with disabilities. Additionally, Reclamation must provide auxiliary aids and services to individuals with disabilities to ensure effective communication.
2. **Applicability.** This D&S applies to all Reclamation staff involved in administering facilities, programs, and activities by or on behalf of Reclamation under 43 CFR Part 17, et seq and other specific authorizations, to the extent they apply.
3. **Designation of Regional and Area Accessibility Coordinators.** Regional Directors must designate a Regional Accessibility Coordinator (RAC) and as many Area Accessibility Coordinators (AACs) as necessary to carry out the requirements under this D&S.
4. **Training.** The Civil Rights Division (CRD) shall provide accessibility training to RACs and AACs, and provide support in investigating civil rights complaints in accordance with D&S CRM 01-01, Public Civil Rights Complaints, to include monitoring compliance when

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changes are warranted in the case of a complaint. Resources for RAC and AACs are located in Appendix B.

5. **Federally Conducted Program (FCP).** The purpose of the FCP is to conduct civil rights compliance reviews to ensure against discrimination in any program or activity on a federal facility. Under the provisions of Section 504 of the Rehabilitation Act, programs, activities, and services must be accessible to, and usable by, individuals with disabilities. Most of the public areas operated by Reclamation are managed through third-party agreements. It is the responsibility of the RAC/AAC to conduct periodic reviews of those Reclamation facilities to ensure that all of the facilities, programs and activities comply with the civil rights laws located in Appendix A. Compliance evaluations consist of either an on-site accessibility review or an off-site review of records, commonly referred to as a desk audit.
 - A. **Stakeholder engagement.** RAC and AAC must establish a process for the inclusion of staff responsible for accessibility compliance in appropriate reviews, such as:
 - (1) O&M
 - (2) Recreation
 - (3) Land management
 - (4) Concession
 - (5) Other lease compliance reviews, condition assessments, life safety, public health and safety, asset management surveys, or seismic evaluations
 - B. **Review schedule.** Reclamation, at its own expense, will evaluate its programs, policies, procedures, and buildings and facilities to determine compliance with accessibility laws and regulations. RAC and AAC shall conduct accessibility evaluations of Reclamation facilities at least once every five years. RACs will report to the CRD on an annual basis on the status of accessibility evaluations. RACs have the discretion to rotate accessibility reviews between onsite and desk audits.
 - C. **On-site reviews.** The purpose of the on-site review is to identify any non-compliant element(s) of the facility, program, or activities. The CRD will provide training, checklists, and oversight of the accessibility review process, and the RAC/AAC will conduct periodic accessibility evaluations of the facilities in their respective Regions. The review process involves:
 - (1) Entrance conference to provide general information to the official in charge of the facility, their representative and/or other official responsible for implementing civil rights laws.
 - (2) Facility inspection to evaluate compliance with the Architectural Barriers Act Accessibility Standards (ABAAS). The summary report will detail the barriers to accessibility.

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- (3) Ensuring that nondiscrimination Posters will be displayed in prominent places, and contain the correct contact information for filing a complaint.
- (4) Exit conference to discuss the review and tentative findings of the compliance review. Conferences are typically done on the last day of the review, and includes information on the next steps in the evaluation process.
- (5) Submitting a report of findings to the CRD within 45 days after the compliance review. This report must address deficiencies and include:
 - (a) The name and description of the facility;
 - (b) The program area(s) identified, if applicable;
 - (c) Description of the program or activity examined;
 - (d) Results of any analyses conducted;
 - (e) Summary of any interviews conducted;
 - (f) Relevant evidence obtained;
 - (g) Description of any non-compliant accessibility standards;
 - (h) Developing transition plans according to 43 CFR parts 17.510 and 43 CFR part 17.550 that includes recommended corrective actions for any non-complaint items; and
 - (i) Recommended next steps.

D. **Off-site reviews.** An off-site review is an assessment of policies and practices regarding compliance with civil rights requirements. These reviews involve reviewing policy documents, telephone interviews with selected individuals, and any other relevant information.

6. **Compliance for Accessibility Standards.** Under the provisions of Section 504 of the Rehabilitation Act, programs, activities, and services, when viewed in their entirety, must be accessible to, and usable by, persons with disabilities. Managers and Supervisors are responsible for implementation of this D&S by communicating requirements to staff, ensuring training of subordinates, requesting and supporting adequate budget to fulfill requirements, and being aware of the specific requirements within their areas of responsibility. 43 CFR Part 17.550 provides that Reclamation programs meet accessibility design standards, or offer an alternate method to participate. The RAC/AAC must also work with managing partners and facility managers to correct identified deficiencies, provide technical guidance, training, and assistance to internal and external customers. Upon request, the RAC/AAC can also review contracts, drawings, and specifications and report on goals established by the Department under the Government Performance and Results Act and EO 12250, as well as responding to other data calls.

A. Compliance Options.

- (1) Compliance of Program in New or Altered Buildings and Facilities.

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- (2) **Compliance of Program in Existing Unaltered Buildings and Facilities.** Programs provided at an existing unaltered building or facility must meet the minimum requirements and methods set forth by 43 CFR Part 17.550.

- B. **Undue Burden.** There are three types of undue burden: (1) fundamental alteration to a program; (2) financial or administrative; and (3) architectural. Reclamation will make determinations after considering all resources available for use in the funding and operation of the conducted program or activity, and include a written statement of the reasons for reaching that conclusion. Determining undue burden does not release Reclamation from its responsibility to comply with the intent of the laws and regulations. However, if an action were to result in a determination that there is undue burden, Reclamation shall take all other actions it can to ensure that persons with disabilities receive the benefits and services of the program or activity per 43 CFR Part 17.550.
 - (1) **Fundamental Alteration to a Program and Financial or Administrative Burden Procedure.** The Commissioner makes the decision on a case-by-case basis that compliance would result in a fundamental alteration of the program, if there is a financial, or administrative burden, and noted in the administrative record.
 - (2) **Architectural Undue Burden Procedure.** The Commissioner must forward a written request for an exemption to the U.S. General Service Administration. The request must include all evidence utilized in the Commissioner's determination of undue burden. Only the Administrator of U.S. General Service Administration has the authority to grant an exemption from compliance with accessibility design standards.

- C. **Fundamental Alteration to Nature of Program.** When changes to a program would result in a fundamental alteration to the nature of the program, Reclamation staff must document the reasons for reaching that conclusion.

7. **Communications.** Reclamation, or those entities providing programs on behalf of Reclamation, must furnish, at its expense, effective means of communication and appropriate auxiliary aids. Appendix B contains resource information on Section 508.
 - A. **Examples of auxiliary aids include:**
 - (1) Qualified sign language interpreters
 - (2) Tactile models
 - (3) Audio/visual media (open captioned as well as audio described)
 - (4) Posters
 - (5) Interpretive programs and exhibits produced using hierarchical text
 - (6) Publications

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- (7) Signage
- (8) Training
- (9) Web sites

B. Interpretive Programs and Materials. All interpretive programs and materials must be made accessible to, and usable by, individuals with disabilities.

- (1) All new audio/visual media, whether purchased or produced by or for Reclamation, will be open captioned and carry an audio description of the visual features. Existing films, videos, DVDs, and audio tapes will have a written script. In addition, Reclamation staff will provide upon request the information from audio/visual media in an alternate format.
- (2) Reclamation staff will make available an assistive listening system (either permanent or portable) that can accommodate both verbal and visual descriptions in all assembly areas.
- (3) All exhibits and interpretive signage, whether temporary or permanent, will be accessible to all persons and modeled in such a way as to facilitate understanding by persons with communication(s) impairments. This may require alternate formats for communication.
- (4) Reclamation staff will ensure that tours are held along accessible routes and qualified sign language interpreters are provided, upon request. In addition, portable listening systems will be provided, as well as signs posted announcing their availability.
- (5) Reclamation staff will ensure that interactive kiosks are designed and installed in such a way that persons with disabilities can view, reach, and operate the kiosk regardless of their impairment. See Appendix B for Section 508 technical resources. Accessible features on kiosks must include:
 - (a) Open captioned audio features;
 - (b) Audio described visual features; and
 - (c) Instruction for use on a touch screen provided in a pre-recorded format for persons with visual impairments.

C. Public Hearings, Events, and Activities. Reclamation staff hosting hearings, events and activities must ensure that all advertising materials contain a statement on how to request an accommodation, and these requests. All advertisements and notices require requests for accommodation at least 2 weeks prior to the event. Reclamation shall give primary consideration to the auxiliary aid requested when determining which type of aid to provide per 43 CFR Part 17.560. This may entail providing computer-aided transcription services, note-takers, transcripts of the meeting proceedings, and/or hiring

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qualified sign language interpreters. Meetings or other event lasting longer than 1 hour will require the services of more than one qualified sign language interpreter.

- D. **Public Information Dissemination by Telephone.** Reclamation staff responsible for public dissemination of information, such as reservoir elevations and water flow data, will ensure that it is published using accessible means of communications. Pre-recorded information provided over a telephone will include the Federal and/or State Relay System phone numbers so that persons who cannot communicate over a regular telephone have the option to use relay services to obtain the information. In offices where there is the potential for communication with persons who have communications impairments, those offices must have a telephone communications device for the deaf or other type of communications software in the reception area of each office and staff properly trained in the use of the equipment. See Appendix B, for Section 508 technical resources.
- E. **Publications and Printed Materials – Alternate Formats.** All written materials, publications, training and educational materials, posters, promotional materials, report illustrations, graphics, and displays will be available in alternate formats upon request. All documents will include a notice indicating the availability of alternate formats.
8. **Buildings and Facilities.** The ABA requires that all new buildings and facilities built or leased with Federal funds, in full or in part, be fully accessible. All modified and altered buildings and facilities are to be brought up to accessibility design standards in place at the time unless it will result in undue financial or administrative burden. Requirements for accessibility modifications do not apply during routine maintenance activities.
- A. **Places of Employment.**
- (1) **Leased Space.** Leases executed, extended, or renewed between January 1, 1977, and February 6, 2007, must comply with the requirements of the ABA. On or after February 7, 2007, leases executed, extended, or renewed must comply with ABAAS. RACs are responsible for evaluating all leased buildings occupied by Reclamation employees for compliance in accessibility design standards prior to execution of the lease agreement. Noncompliant items must be addressed by an article to the lease addressing modifications, deadlines for completion, and responsibility for covering costs before the lease agreement is executed.
 - (2) **Reclamation-owned Spaces.** RACs are responsible for ensuring that Reclamation-owned spaces must comply with the accessibility design standards in effect at the time of building construction or modification.

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(3) **Other.**

- (a) Where Reclamation staff occupy a space not owned or leased by Reclamation, the employee's workspace, to the extent required, and common use areas, the RAC will evaluate the occupied spaces for accessibility compliance. If not in compliance, Reclamation will negotiate with the building owner to fund and correct deficiencies in the workspace and common use areas.
- (b) The RACs will review temporary office space used by Reclamation staff consisting of buildings and facilities not of permanent construction to ensure they comply with the accessibility design standards. Exemptions from accessibility standards include structures, sites and equipment associated with construction, such as scaffolding, bridging, hoists, portable toilets, or construction trailers.

B. **Housing.**

- (1) **Government Housing.** ABAAS requires residential structures comply with the accessibility design standards and scoping in effect at the time of construction or modification of the structure. Receipt of lease or rental payments from residents does not relieve Reclamation from the requirement to comply with the standards.
- (2) **Temporary Housing.** ABAAS requires dormitory or residential buildings and facilities, used year-round or seasonally, comply with the accessibility design standards and scoping in effect at the time construction or modification of the structure. Receipt of lease or rental payments from residents does not relieve Reclamation from the requirement to comply with the standards.

C. **Recreation Facilities.** All recreation facilities will incorporate accessibility design standards in place at the time of construction or modification.

D. **Planning.** RACs and AACs must be involved in the planning of new and modified facilities to ensure that they meet accessibility standards.

E. **Design, Construction, and Inspection.** Regions shall establish processes to ensure accessibility compliance of new and modified buildings and facilities during the design, construction, and inspection phases.

- (1) **Design.** It is the responsibility of the designer, engineer, or landscape architect to determine how to address construction and manufacturing tolerances in designs and specifications to ensure the finished products comply with accessibility design standards.

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- (2) **Construction.** The staff responsible for accessibility compliance must be consulted about changes prior to authorizing field changes.
 - (3) **Inspection.** The construction inspector will ensure that the accessibility design standards are in place before final acceptance from the contractor. In addition, proposed field changes require the consultation of staff responsible for accessibility compliance.
- F. **Modifications Made for Other Reasons.** Staff responsible for modifications to a building or facility must communicate with their respective RAC throughout the process. Reasons for modification may include purposes other than accessibility, such as seismic upgrades, life safety, historic preservation and security, and these modifications may result in the loss of accessible spaces. Where existing elements or spaces are altered, each altered element or space shall comply with accessibility standards.
- G. **Historic Structures and Heritage Assets.** When a building or facility is listed, or is eligible for listing, on the National Register of Historic Places or in a State or local historic register, consultation between the accessibility coordinator and the cultural resources staff is required before modifications to existing buildings can be made. See 43 CFR Part 17.550(b)(2) and ABAAS F202.5 for the methods to provide accessibility, including physical access and exceptions.
- H. **Accessibility Design Standards.** Important practical differences exist between accessibility design standards for new and existing buildings. Appropriate accessibility design standards will apply to all new buildings and facilities and the modification of existing buildings and facilities.
- (1) Buildings and facilities that were constructed prior to 1968 are exempted from ABAAS standards if they have never been modified, however, they are required to meet programmatic access. If any modifications, other than routine maintenance, have occurred, or will occur, then appropriate standards shall be applied.
 - (2) Buildings and facilities constructed or modified between 1968 and 1992 shall comply with UFAS.
 - (3) Buildings and facilities constructed or modified between 1992 and 2006 shall comply with UFAS, except where ADAAG is more stringent, per Department Equal Opportunity Directive 93-07.
 - (4) Buildings and facilities constructed or modified after May 8, 2006, shall comply with ABAAS.

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- I. **Operations and Maintenance (O&M).** Buildings, facilities, and equipment required to be readily accessible to, and usable by, persons with disabilities must be in good working condition. Common maintenance issues include clear maneuvering space, reach ranges, access and egress routes, assistive listening devices, and other equipment.
- (1) Routine O&M undertaken by or on behalf of Reclamation shall ensure that the accessibility of buildings and facilities.
 - (2) Regions shall establish a process for training facility maintenance staff to ensure that the accessibility of buildings and facilities.
9. **Budget.** Project staff is responsible for requesting appropriate funds to correct identified deficiencies.
10. **Acquisitions, Construction Contracts, and Contracting Processes.**
- A. **Supplies and Equipment.** Regions shall establish a process for reviewing acquisitions or purchases for supplies and equipment that have accessibility implications to ensure accessibility compliance.
 - B. **Architectural-Engineering (A-E), Design, and Construction Contracts.** It is the requesting office's responsibility to ensure that specifications comply with the appropriate accessibility design standards. RACs are responsible for reviewing designs and specifications for new and modified buildings and facilities for accessibility compliance. Each contract will include the clause below, or an equivalent clause:

“The Contractor shall [design, construct, provide] the [facility, product] to ensure accessibility as required by law for persons with disabilities in accordance with the Architectural Barriers Act of 1968 (82 Stat. 718), as amended (42 U.S.C. 4151 et seq.) and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

“Specific requirements are set forth in the Americans with Disabilities Act/Architectural Barriers Act Accessibility Guidelines: ABA Chapter 1 (Application & Administration); Chapter 2 (Scoping Requirements); Chapters 3-10 (Technical Requirements), commonly referred to as ABAAS, and used by the Contractor to ensure compliance with the above listed laws. The finished [facility, product] must meet the requirements set forth in ABAAS. It is the sole responsibility of the Contractor to determine beforehand how to address tolerances to ensure that the finished products comply with Federal standards. Should the finished [facility, product] fail to comply, it shall be the responsibility of the Contractor, at its sole expense, to make any adjustments necessary to bring the deficient components into compliance.”

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- C. **Acquisition and Contracting Processes.** All pre-award, award, and post-award discussions with contractors shall comply with Paragraphs 5, 6, and 7.
 - D. **Rating Panels.** Rating panels where accessibility implications may exist shall include staff knowledgeable about accessibility standards.
11. **Notice of Nondiscrimination and Complaints Processing.** Reclamation offices and partners conducting programs on behalf of Reclamation, will post, in a prominent location, a statement of nondiscrimination that includes information on where to file a complaint. The CRD will process any complaints received directly from a complainant or from the Department. CRD will notify the Department of the status of all complaints according to applicable regulations. See Appendix C.

12. Definitions.

- A. **Alternate Formats.** Alternate formats are the substitute means of communication if the original information is in text, visual or audio form. Examples include printed material such as large print (18 to 24 point) and Braille, tactile models, audio-recordings, or computer disk.
- B. **Americans with Disabilities Act Accessibility Guidelines (ADAAG).** The architectural standards that govern structural and communications access to non-Federal and private entity buildings and facilities in effect between January 26, 1992, and May 7, 2006.
- C. **Americans with Disabilities Act of 1990.** Law ensuring nondiscrimination on the basis of disability in programs, activities, buildings and facilities by private entities, public accommodations, and state and local governments.
- D. **Architectural Barriers Act Accessibility Standards (ABAAS).** The accessibility scoping and technical requirements for Federal sites, facilities, buildings, and elements under the ABA in effect after May 8, 2006. ABAAS is comprised of ABA Chapter 1 (Application and Administration), ABA Chapter 2 (Scoping Requirements), and Chapters 3-10 (Technical Requirements).
- E. **Architectural Barriers Act of 1968.** The law requiring that any facility on Federal property, or any facility leased, rented, built, or modified with Federal funds shall be accessible to and usable by persons with disabilities.
- F. **Effective Communication.** The regulatory responsibility to ensure that persons with communications and/or cognitive impairments receive the same benefit of education, entertainment, and information dissemination as persons without such impairments.

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- G. **Evaluation.** A systematic and detailed review by trained personnel of all buildings, facilities, and programs to determine compliance with applicable laws, regulations, and accessibility design standards.
- H. **Exemption.** Authorization to deviate from full or strict compliance with the standards where compliance could cause undue financial and administrative burden to Reclamation, or the fundamental alteration of the program or activity.
- I. **Facility.** All or any portion of a building, structure, site improvement, constructed element, and pedestrian route or vehicular way located on a site.
- J. **Federally Conducted.** Programs and services directly conducted by or for Reclamation personnel, or through partnerships on behalf of Reclamation, for the benefit, education, aid, and enjoyment of the public.
- K. **Interpretive Program.** A program or activity which aims to reveal meanings and relationships through the use of original objects, by first-hand experience, and by illustrative media, rather than simply to communicate information. Traditional exhibits, interactive exhibits, scale models, and tours are all examples of interpretive programs.
- L. **Person(s) with a Disability/Impairment.** An individual with a physical, mental, or sensory impairment that substantially limits one or more major life activities (e.g., walking, seeing, caring for self, breathing, learning), has a record of such impairment, or regarded as having such impairment.
- M. **Program or Activity.** Reclamation provided service or function. Federally conducted programs and activities that Reclamation must make accessible include recreation, bid openings, recruitment, employment, trainings, public information and/or education, visitor centers, and public meetings.
- N. **Qualified Historic Building or Facility.** A building or facility listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate State or local law.
- O. **Qualified Sign Language Interpreter.** One who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using necessary specialized vocabulary.
- P. **Routine Maintenance.** Work performed to maintain normal operations, such as re-roofing, interior decoration, painting, trail repair, and changes to mechanical and electrical systems. For accessibility, cost and frequency are not factors to consider.
- Q. **Scoping.** The percentage of constructed elements required to comply with the accessibility design standards based on the total number of elements provided.

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- R. **Site.** A parcel of land bounded by a property line or a designated portion of a public right-of-way. A site may have one or more facilities within the boundaries or may have no facilities.
 - S. **Transition Plan.** Also known as an Action Plan, is a report that details the steps needed to bring a non-compliant program and/or building or facility into compliance with accessibility laws, regulations, and standards. This report serves as the link between identified needs for retrofits and budget formulation.
 - T. **Undue Burden.** A determination of difficulty or expense, considering factors that include the nature and cost of the needed modification in the facility or change in the program.
 - U. **Uniform Federal Accessibility Standards (UFAS).** The accessibility scoping and technical requirements for sites, facilities, buildings, and constructed elements under the ABA in effect between August 12, 1968, and May 8, 2006.
13. **Review Period.** The originating offices will review this release every 4 years.

RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: _____

Release No. _____

Ensure all employees needing this information are provided a copy of this release.

Reclamation Manual Release Number and Subject

Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: _____

Date: _____