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Accessibility Guidebook for Ski Areas Operating on Public Lands

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PREFACE

The purpose of this guidebook is to provide information for ski areas authorized, under a special-use permit from U.S. Department of Agriculture (USDA) Forest Service (Forest Service), to partner with the Forest Service to achieve common goals of managing and promoting active participation in alpine recreation. This document provides information about program accessibility for ski areas. By working together, the agency and the ski area management can ensure equal opportunity for all people, including people with disabilities.

Ski areas operating under special-use authorization from the Forest Service are required to comply with both the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). The ADA applies because the ski areas operate as “public accommodations,” that is they are businesses open to the public. Section 504 applies because ski areas operate under special-use permits authorized by a Federal agency, the Forest Service. Implementation guidelines for Section 504, that apply to recreation special-use permit holders, are located in 7 CFR 15b. By signing the special-use authorization, the ski area agrees to abide by these and all other laws, regulations, and policies of the Federal Government.

Disclaimer

This document contains a number of citations to legal requirements. However, apart from these legal references, the program information contained in this document is not, and should not be construed as, a legal standard. The document was developed as a resource only and is not intended to impose additional requirements on resort operators. Deviations from the guidelines contained herein may be dictated by the circumstances of each individual situation and operations and procedures may vary from resort to resort. The information contained in this guidebook is intended to provide winter outdoor recreation service providers with a framework to better serve old and new customers. This framework should be thought of as a new approach to customer service, an approach that seeks to provide the right fit between the customers and the services provided.

The general information and opinions expressed here are not intended as legal advice. The Forest Service assumes no responsibility for the inappropriate application of the information. Those who make use of this guidebook are responsible for the accessibility and the safety of the programs they plan, design, and manage. Resorts should work with experienced legal counsel to advise them on legal issues relating to accessibility.

Acknowledgments

We would like to thank Peter Axelson and other staff members of Beneficial Designs, Inc., for their extensive work on a project that compiled some of the information contained in this document. Also helpful were adaptive sports equipment manufacturers, chair lift manufacturers, ski area operators, skiers with disabilities, and adaptive sports program directors.

Much of the philosophical framework for this guidebook was developed by Greg Lais and staff members from Wilderness Inquiry, as published in the draft *Universal Access*:

Guidelines for Outfitters Operating on Public Lands (Wilderness Inquiry, Inc., 1995). We appreciate their willingness to share that information with a wider audience.

Written comments are appreciated. Submit comments to: Accessibility Program Manager, Forest Service, Recreation Program, 1400 Independence Avenue S.W., Mailstop 1125, Washington, DC 20250-1125 or by e-mail to jzeller@fs.fed.us.

INTRODUCTION

The Americans with Disabilities Act of 1990 (ADA) and other accessibility legislation, has touched many lives, inspiring hope among many and anxiety among some. The goal of this guidebook is to address the legal mandates and to provide a positive and practical approach to serving all people, including people with disabilities, who wish to experience America's Great Outdoors. To this end, the guidebook explains legal mandates and provides helpful suggestions for meeting the needs of his important customer base.

A critical component of providing effective service is your employees' attitude while working with all of your customers. Negative attitudes are a major source of complaints. People with disabilities, like other customers, are going to respond first and foremost to what they perceive to be the employee's attitude toward them.

The primary focus of this guidebook is accessibility to *programs* and activities, sometimes referred to simply as "program access" and includes all activities provided by ski areas. Facility or structural accessibility will be referenced only briefly. This guidebook commonly uses the term "skiing" to refer to snowsliding activities which may also include snowboarding or other methods.

This guidebook will provide guidelines and suggestions about how to comply with the ADA, the Rehabilitation Act of 1973 (Section 504) and 7 CFR 15b. Suggestions for providing customer service in the spirit of equal opportunity are also be provided. However, this guidebook does not take a "compliance driven" approach. Instead, it provides suggestions to enable you to provide high-quality services for the broadest range of customers.

Facility Access vs. Program Access

When most people think about a person with a disability, they think of a person who uses a mobility devices, even though only 8 million of the 54 million people with disabilities use a wheelchair, crutches, or a walker. Just as people who use wheelchairs represent a very small percentage of people with disabilities, providing wheelchair ramps represents a very small portion of what needs to be done to provide access. Nevertheless, facility accessibility is an important issue. Access to facilities is required under the ADA and 7 CFR 15b, if the facility has to be entered in order to participate in the program being offered.

A primary basis of the accessibility laws, Section 504 of 1973 and the ADA of 1990, is

that access goes well beyond physical structures. Access needs to include the programs and services provided by an agency, company, or organization. While access to physical facilities represents a major leap forward, the need to provide access to programs and services is a more profound change—and more confusing.

Program access means that a person with a disability has an equal opportunity to participate and gain the same benefits offered by a program or service. This is true whether the program or service offered is eating in a restaurant, visiting an historic site, or recreating outdoors. Perhaps the easiest way to think of program access is to think of the services that a ski area provides, for example, instruction, food service, equipment sales /rental, and ensure those services are available to all qualified participants. Programs are not required to guarantee successful participation, but instead to offer equal opportunity for participation.

GENERAL INFORMATION

In 2004, there were 54 million people with a disability living in the United States. This number is increasing by about 1 million each year. When you consider that most people recreate with family and friends, as much as 50 percent of the U.S. population will benefit from accessible programs and services. In addition, the U.S. Census Bureau estimates that by the year 2030, over 50 percent of the U.S. population will be over 55 years of age. One thing is certain, with advances in medical technology and the aging of “baby boomers,” the percent of the U.S. population living with a disability will increase significantly over the next 25 years.

You probably know someone with a disability. It could be a family member, a friend, an acquaintance or yourself. Unlike other “minority” designations, a disability may, and probably eventually will, include all of us since our abilities change over time. As you prepare to better serve people with disabilities, remember that you are also preparing to serve every one of your current customers as they move into different stages of their lives.

Much is made about the differences between people with disabilities and people without disabilities. Certainly, there can be differences. However, the differences imposed by disability are not usually what a non-disabled person thinks they are. People without disabilities tend to think of the loss of function, the inability to walk, see, or hear. Actually the biggest challenge people with disabilities face is often the change of attitude toward them by others.

Over and over again, people with disabilities state that they can learn to accept and accommodate the limitations imposed by their disability. The hardest part is accepting the changes in the way they are treated by people who do not have disabilities. Friends who once went fishing with them, no longer do so. Strangers may avoid eye contact or gush with well meaning but misplaced sympathy at their loss.

DISABILITY

LEGAL DEFINITION

Accessibility laws use a definition that focuses on functional issues. It defines

people with disabilities as those with one or more of the following:

- ◆ A physical or mental impairment that substantially limits one or more of the major life activities of such individual,
- ◆ A record of having such an impairment, or
- ◆ Being regarded as having such an impairment.

Major life activities include walking, talking, seeing, hearing, working, and independently caring for oneself (that is, eating, dressing, or personal hygiene, etc.).

Appropriate Language

The two terms most commonly used to describe a person who has a limitation are “handicapped” and “disabled.” A “disability” is a medically definable condition that causes a limitation. A “handicap” is a barrier. The barrier may be environmental—such as stairs that handicap a person using a wheelchair—or it may be a negative attitude, either held by the person who has the disability or by the person who does not.

The 1990 passage of the ADA established only two terms: “accessible” and “person with a disability.” The correct terms to use are a “person with a disability” or just “disability.” The term “handicapped” is offensive to many people. The term accessible is to be used to refer to facilities, parking spaces, etc., that are in full compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

Since language forms the basis by which we perceive and communicate, carefully select the words you use in written and spoken communication. Do not use negative words like “cripple,” “invalid,” or “lame.” These words suggest images that evoke pity, guilt, or lack of ability. Other terms that may be offensive to some people are “physically challenged,” “differently abled,” and “specially enabled.” Use terminology based in the laws and that is least offensive to the majority of people.

Don't forget that people with disabilities are people. Remember to refer to the person before referring to a disability. For example, speak about a person who uses a wheelchair rather than “the wheelchair.” Refer to “people with disabilities,” instead of “disabled people.” Avoid words such as “normal” or “able-bodied” when comparing people who have disabilities with other customers.

The basic rule is to treat everyone with respect. Tips for interacting with people with disabilities are included at the end of this guidebook.

As a ski area manager, instructor, or employee, expand your working knowledge of disability issues by actively seeking more information than is provided in this guidebook. A good place to start is by talking directly to people with disabilities and people who are knowledgeable about the subject.

RELEVANT LAWS AND LEGAL CONSIDERATIONS

Significant legislation that preceded the Americans with Disabilities Act of 1990, included the Architectural Barriers Act of 1968 and the Rehabilitation Act of 1973, as amended.

Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.).

The Architectural Barriers Act (ABA) was the first measure passed by Congress to ensure access to facilities. The ABA requires that all facilities built, bought, or leased by or for a Federal agency be accessible.

Rehabilitation Act of 1973 (29 U.S. Code 794 and 794d).

Section 504 of the Rehabilitation Act (Section 504) states: “No otherwise qualified individual with a disability in the United States shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive Agency.”

It should be noted that Section 504 seeks to ensure equal opportunity, but does not require exceptional opportunity be provided for a person with a disability. In other words, a person cannot be denied participation simply because they have a disability. However, a person with a disability must follow the same regulations and meet the same eligibility criteria that is applied to all other people in order to participate. If the person with a disability does not meet the criteria, or abide by the regulations, that person can be denied participation in that program.

Section 504, as amended, requires Federal agencies to provide accessible programs and facilities. It also requires agencies to ensure that the programs and facilities operated on federally managed land be accessible, whether they are conducted by the Federal agency or by a private entity, such as a ski area operating under a special-use permit or any other form of permit. Private business or organizations, receiving any form of Federal assistance, including the use of federally managed land, are also subject to the provisions of Section 504.

Federal agencies are working to make the programs and services they operate accessible. They are also working with permit holders to ensure the requirements for accessibility are in compliance with the laws. Although implementation of Section 504 has been slow, all Federal agencies subject to the law are required to develop and implement accessibility regulations with the federally assisted or conducted programs with which they work.

7 Code of Federal Regulations (CFR) Part 15b (effective December 19, 1990).

7 CFR 15b.3 (g) (4) states that “any other thing of value”, i.e. that a business is dependent for its operation on the use of Federal lands under a special use permit, equates to that business being “Federally assisted” and therefore under the legal requirements of 7 CFR 15b, according to the USDA Office of General Counsel and the Department of Justice.

7 CFR 15b comprises the regulations that implement Section 504 of the Rehabilitation Act in the programs and activities of entities which operate on Federal lands, under a permit from a USDA agency. These CFR provisions address program accessibility, requirements for accessible programs in new, altered and existing facilities, accessibility transition planning, accessible communication requirements, and compliance procedures.

The Americans with Disabilities Act of 1990

The ADA was modeled on the ABA and Section 504. The ADA applies to State and local government services, public transportation and to public accommodations including businesses that are open to the public.

To understand the ADA, it is important to remember several key points. First, the ADA is essentially civil rights legislation, in that it is designed to protect the rights of people with disabilities in employment, transportation, public accommodation, and access to public services.

An underlying concept of the ADA is that decisions for employment and program participation should not be based on stereotypes. Service providers cannot base their decisions simply on the fact that an individual carries the label of a disability. Instead, decisions must be based on what that individual can do. If the individual can perform the basic functions of an activity, the essential eligibility requirements, he or she must be permitted to participate.

In addition, like Section 504, the ADA covers both facility access and access to programs and services. In other words, not only must buildings be accessible but the activities that take place within and outside those buildings are also to be accessible.

Five Titles of the ADA

Title I, Employment

Title I prohibits discrimination against any qualified individual with a disability with regard to job application procedures, hiring, advancement, job training, and other terms of employment. For more information regarding employment contact the Equal Employment Opportunity Commission at <http://www.eeoc.gov> or 800-669-4000 (Voice) or 800-663-6820 (TTY).

Title II, Public Services

Title II requires that State and local governments, or agencies providing services on behalf of State or local governments, provide access to all of their programs, services, benefits, and activities.

Title III, Public Accommodations

Title III is the area of the ADA that affects ski areas. Private businesses that own, operate, lease, or sublease places of public accommodation are included under Title III. Public accommodations are, generally, any place that provides goods or services to the general public, such as hotels, golf courses, and stores. Nonprofit organizations are also generally included under this title of the ADA.

Title III requires the removal of architectural barriers in existing facilities where such removal is readily achievable. When removal of barriers is not readily achievable, alternative services must be provided. Under Title III, new facilities or altered facilities must be in compliance with the current accessibility guidelines.

Private clubs and religious organizations are not covered by Title III; however, an organized camp authorized under a special-use authorization and operated by a private club or religious organization would be affected by the provisions of Section 504 because its programs are dependent on the use of Federal managed lands.

Title IV, Telecommunications

Title IV requires that phone companies provide telecommunications relay services for people who have hearing or speech impairments.

Title V, Miscellaneous

Title V provides miscellaneous instructions to Federal agencies that enforce the law.

SUMMARY OF THE ACCESSIBILITY LAWS

Both Section 504 and the ADA state that entities may not prohibit an individual with a disability from participating in or receiving the benefits of programs, services, and activities on the basis of disability. As a ski area, it is important that you understand that the services provided by operating on public lands are covered by the ADA, Section 504 and 7 CFR 15b. Therefore, you should understand what is required and work toward providing it.

FACILITY ACCESSIBILITY GUIDELINES

For buildings/facilities, from a technical point of view, there are many similarities between the accessibility standards used for ABA compliance and the accessibility standards used for Americans with Disability Act (ADA) compliance. The ABA accessibility standards are called the Uniform Federal Accessibility Standards (UFAS). ADA standards are called the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Under the ABA, the ADA and 7 CFR 15b, new construction or alteration of facilities are to be accessible in compliance with the current accessibility guidelines. Privately owned businesses are required to use ADAAG, or the local or State code, if it has equal or greater requirements, for new construction and renovation.

However, 7 CFR 15b.19 (c) requires those businesses operating under permit from a USDA agency to follow the accessibility standards under the Architectural Barriers Act (ABA). Those ABA standards have been the UFAS, however the standards are changing. The ABA and the ADA accessibility standards have recently been combined as the ADA/ABA Accessibility Guidelines (ADAABAG). These guidelines are currently completing the final approvals to become the legally enforceable accessibility standards for new facility construction and alteration. The current enforceable accessibility standards are available on both the U.S. Access Board website at www.access-board.gov and the Forest Service Accessibility website at www.fs.fed.us/recreation/programs/accessibility.

The B77.1 ANSI (American National Standards Institute) Standards, of 2005 contains the requirements for the accessibility of ski area facilities including gondolas, chair lifts and so forth.

INTERPRETING THE LAWS

Many business owners want hard and fast rules on how to implement the ADA, and they are frustrated when they get the answer “it depends.” However, with laws as broad ranging as the ADA and Section 504, it takes time for standards to evolve, especially when those standards involve broad concepts such as programs and services. The ultimate legal impact of the accessibility laws will be determined as cases come to trial and are ruled on by the court system. In the meantime, we should seek to abide by the laws and provide equal opportunity for all.

Safety Considerations

Some situations may present a potential conflict between accessibility needs and safety concerns. On the other hand, some anticipated conflicts may be based on misperceptions, stereotypes, or misinformation about access measures. There is no legal obligation to compromise customer safety to provide for accessibility. Safety must never be compromised.

Civil Penalties for Violating the ADA

Civil penalties for violating the ADA vary somewhat according to the different sections of the law.

Title I, Employment

This section has the most severe penalties for violation. Since this is not the emphasis of this guidebook, we will not go into detail other than to advise you that you may be liable for compensatory and punitive damages if you discriminate against people with disabilities in your employment practices.

Title II, Public Services

The penalty for publicly funded businesses is injunctive relief—which means they will have to “right the wrong.” In some instances, a plaintiff may be able to get punitive damages if it was a serious violation.

Title III, Public Accommodations

This is the section that will affect ski areas. The primary penalty here is injunctive relief for righting the wrong. In other words, if an individual with a disability sues and wins, the ski area may have to provide the service that is being requested. However, if the nature of the violation is very serious and of public interest, the U.S. Department of Justice may impose a \$50,000 fine for the first offense and a \$100,000 fine for the second offense.

Title III of the ADA does not allow a private individual bringing a lawsuit to receive general, compensatory damages, including damages for pain and suffering, or punitive

damages. However, the ADA does not prevent an individual from suing under State law for emotional distress or other monetary damages. Therefore, your State human rights laws are much more likely to be relevant in the event of a lawsuit. Legal fees might be awarded to the prevailing party in a lawsuit.

LIABILITIES

Product Liability

Although there are few black-and-white rules, generally speaking, safety equipment or safety features should not be modified. If you are unsure about a modification, don't do it. For example, beware of modifications that inhibit dismounting from a horse or detachment from a piece of equipment, increase the risk of entanglement, or provide a false sense of control or security.

Risks to Employees

The ADA states that legitimate safety requirements necessary for safe operation may be imposed, but that these requirements must be based on actual risks and not on speculation or stereotypes about people with disabilities. Make your employees aware of risky situations and have them seek assistance from management if they have questions. The following are some situations that would pose a risk to employees.

One situation would be an individual who requires assistance transferring from a wheelchair into equipment and whose weight exceeds the safe lifting capacity of available employees. There is no legal requirement for a ski area to provide staff to lift, carry, etc., a customer. However, you are required to inform each potential customer—before he or she signs up for the program—what physical requirements must be met to participate, including if these requirements may be met with the assistance of a companion who accompanies the customer. These requirements should be laid out in the **essential eligibility criteria** for the program, per 7 CFR 15b.3.n (4).

Another situation would be individuals with easily communicable diseases, such as measles or chicken pox. Because employees and other customers would be at risk of catching the disease, a person with an easily communicable disease could be denied participation in the ski area's program.

However, individuals with AIDS or other blood-borne pathogens may not be denied participation because these conditions are not easily transferred from one individual to another. These individuals are protected from discrimination, on the basis of that person's disability/disease, under the ADA.

Managing Risk

. General suggestions for managing risk include:

1. Provide thorough employee training, especially on how to safely accommodate everyone, including people with disabilities. Trained instructors and employees are your best safety policy.

2. Pursue certification in adaptive instruction for your instructors through the Professional Ski Instructors of America (PSIA). Contact PSIA at <http://www.psia.org> or 303-987-9390. Professional Ski Instructors of America (PSIA) certified instructors can take a 1- to 2-day PSIA Adaptive Clinic in a specific discipline to obtain the skills needed to provide instruction to adaptive skiers.

GUIDELINES FOR DEVELOPING AN ACCESSIBILITY STRATEGY

ESSENTIAL ELIGIBILITY CRITERIA

Under the ADA (Title III Sec. 302 (b) (2) (A) and Section 504 in 7 CFR 15b.3.n (4) a person with a disability cannot be denied participation in a ski area's program that is available to people who do not have disabilities, unless the person with a disability does not meet the "essential eligibility criteria" that is applied to all people prior to participation in that ski area's program.

Strategies for Essential Eligibility Criteria

Ski areas provide a wide spectrum of activities and programs. The purpose of essential eligibility criteria is to establish whether or not an individual can participate in an activity based on his or her ability to safely perform the basic functions of the activity. In order to participate in an activity, all potential customers must be able to meet the nondiscriminatory essential eligibility criteria established by you as the ski area for that specific activity.

The essential eligibility criteria for each program are to be applied to all potential customers. If the essential eligibility criteria is only applied to potential customers who have disabilities, the criteria could be considered to be discriminatory if put to a legal challenge.

Strategies for Developing Essential Eligibility Criteria

The purpose of developing essential eligibility criteria is to give both the ski area employees and the potential customer the information they need to make an accurate, objective assessment when deciding if their abilities are appropriate for a specific program. This means that employees should be able to clearly explain the criteria for participation. The criteria should be based on functional components and applied equally to every potential customer. For example instead of a ski instructor disqualifying a person from participating in a particular ski lesson because the potential customer uses a wheelchair, the instructor must apply the criteria for safe participation in that level of instruction.

In reality, the concept of essential eligibility criteria is something most ski areas already apply to potential customers—that is following your own goals, concepts, and guidelines in determining which potential customers are likely to be able to participate successfully in the program. The problem is that often the ski area orally communicates their program's traditions to staff members and do not have these criteria written down. If

essential eligibility criteria are not written down, two mistakes may be made in applying the criteria to a potential customer who has a disability:

- ◆ **Subjectivity:** The employee has heard the owner discuss the importance of various criteria for participation and so passes along this information to potential customers as best he can recall using nonspecific terminology. As a result, the information conveyed may be incomplete, leading to confusion or a safety issue resulting in a claim of discrimination. Document your eligibility criteria so that it is clear to employees.
- ◆ **Stereotyping:** Many program providers are forced to make quick assessments of a potential customer's abilities without any real knowledge of the potential customer's capabilities. Many people have some stereotypes about the abilities of people with disabilities. When these stereotypes shape the decision process, a potential customer, who has a disability, may be discriminated against.

Developing essential eligibility criteria is similar to developing a job description. Employers should identify the essential and nonessential functions of a job, and then determine whether the individual can perform those essential functions. Following this logic, identify the basic eligibility criteria of the experience your program is providing and then determine whether the individual can safely perform those functions.

In determining whether a person can successfully participate in your services, you must base your decision on what an individual can do—not subjective items or a stereotype. If they can perform the basic functions of an activity, they can participate. Caution the ADA Title III sec.302 (b)(2)(A)(i) states that is discriminatory to impose essential eligibility criteria that screen out or tend to screen out individuals with disabilities from the full and equal enjoyment of the program being provided. So be sure to keep the focus of the essential eligibility criteria you develop on safety and not use discriminatory language.

Steps In Developing Essential Eligibility Criteria

Developing guidelines based on what you need your customers to be able to do should be an easy process. You may already know your guidelines—you just need to write them down. The following the steps will help you in this process.

1. Determine the physical and mental abilities necessary for participation in your programs and activities. What abilities are necessary to participate in the specific activities of your program, such as using a fishing rod or rifle or riding a ski lift? Does the person have to be smart? Do they have to be strong? Do they have to understand directions? Do they have to understand any highly technical factors of equipment operation? Can they use adaptive equipment to load onto the lift? and so forth.
2. Break the activity into the basic stages of participation (for example, putting on equipment, using equipment, and returning equipment to a specific area). In effect, you need to separate the program into the discrete activities or variables that make up the program.

3. Consider the abilities necessary to remain safe. What are the most likely causes of death or injury involved with that activity and what does someone need to do to avoid them?
4. Prioritize the stages described in number 2 into the critical abilities needed to be safe. For example, in the case of riding a bike, an essential ability would be to balance, steer, and stop the bike. This ability is a higher safety priority than the abilities to shift gears or read a map. Do not use limiting words like walk, climb, or see, instead describe the end result that must be accomplished in nondiscriminatory terms, such as access, ascend, or identify.
5. Consider basic rules or etiquette that the participant must follow. These include issues such as yielding to others who have the right of way or waiting for the rest of the group to catch up.
6. Determine if the guidelines may be satisfactorily met with the help of a companion. An individual may not be able to perform a function independently, but that same individual might easily do it with the help of a friend, family member, employee, or attendant.
7. Edit for simplicity. Stick to the basic physical or mental abilities necessary to participate—the fewer the better. Refer to an activity in terms of who can participate, rather than in terms of who can't.

Examples of Essential Eligibility Criteria Guidelines

Example:

Essential eligibility criteria that are necessary for controlled and safe skiing might include:

- Ability to properly put on and take off the skiing or boarding equipment, independently or with the assistance of a companion.
- Ability to load, ride and unload the lifts safely, either independently or with the assistance of a companion.
- Ability to ski or ride on appropriate trails and areas, to control speed, and to return to the base area, either independently or with the assistance of a companion.
- If a person falls down, he or she must have the ability to get off of the ski trail, independently or with the help of a companion, and the ability to get into the position necessary to continue skiing or riding, independently or with the help of a companion.
- Ability to follow “Your Responsibility Code.”

Essential eligibility criteria focus on ability, rather than disability. Referring to an activity in terms of who can participate, rather than in terms of who can't, counteracts the tendency to stereotype what a person with a disability can do.

Example:

“Your Responsibility Code” is another example of Essential Eligibility Criteria because it must be applied to all skiers and riders, those with and without disabilities.

“Your Responsibility Code”:

- Always stay in control.
- People ahead of you have the right-of-way.
- Stop in a safe place for you and others.
- Whenever starting downhill or merging, look uphill and yield.
- Use devices to help prevent runaway equipment.
- Observe signs and warnings and keep off closed trails.
- Know how to use the lifts safely.

–Courtesy of the National Ski Areas Association

Methods of Providing the Essential Eligibility Criteria

Provide potential customers with the essential eligibility criteria by placing it on your web site as a portion of the specific program’s description, on any brochures or other materials provided to potential customers, and as part of the registration materials signed by the customer.

Essential Eligibility Criteria and Providing Equal Opportunity in the Most Integrated Setting

The accessibility laws state that programs shall be provided in the most integrated setting possible. The most integrated setting is the one that enables interaction among people with and without disabilities as much as possible.

People with disabilities who meet the essential eligibility criteria may not be denied the right to participate in any activity, even if a separate program for people who have disabilities is available. Separate programs specifically for people with disabilities are only acceptable when necessary to provide equally effective benefits and services. **Programs are not required to guarantee successful participation, however, the laws require that programs offer equal opportunity for participation.**

STRATEGIES FOR DETERMINING ACCESSIBILITY

Because of the wide range of types disabling conditions with a specific medical diagnosis, including arthritis, low vision, hearing loss, spinal cord injuries resulting in paralysis, Multiple Sclerosis (MS) and so forth, determining accessibility needs can appear to be confusing. However, despite the differences in diagnoses, the common thread in providing accessibility is that many people with disabilities can successfully participate in adaptive skiing programs.

Use the Functional Approach

It is easy to be bewildered by the names and number of all the disabling conditions that exist. Since there are thousands of disabling conditions listed in medical texts, this is no surprise. Fortunately, there is an easier, more effective approach to the issue than knowing about all the conditions that affect the human body. Adopt a learning attitude that considers both functional issues as well as specific disabling conditions.

The functional approach is based on what people can actually do. This method helps to simplify the process of accommodation because it promotes a “common sense” approach that most people can easily understand. Functional issues include things like being able to walk, talk, and get dressed independently.

The simplified nature of the functional approach does have significant limitations. Because it is generalized, the functional approach does not always capture circumstances that may be specific to a particular condition. Therefore, become more familiar with specific disabling conditions that could have a significant impact on the safety and quality of the service you are providing.

For example, two individuals who use wheelchairs may appear to have very similar functional capabilities. However, one person uses a wheelchair because of a spinal cord injury, while the other one uses the wheelchair because of MS. A spinal cord injury is a static injury, while MS is a progressive disease process.

People with MS can also be susceptible to fatigue and exhaustion due to heat. Weather conditions can exacerbate their disability. Persons with spinal cord injuries—especially those with high-level injuries—face different problems from heat. In some cases a spinal cord injury inhibits the body’s ability to sweat, greatly increasing the possibility of heat stroke. You will be better able to safely meet customer expectations if you know the different ramifications of these two conditions.

Learning about disabling conditions may seem like a daunting task, but it need not be so. You can increase your knowledge by—

- ◆ Talking with potential customers about their specific situation in the context of the activities they are about to participate in. Most will be eager to share the relevant information.
- ◆ Developing contacts with resource people who can answer specific questions and provide training. Examples include your local Center for Independent Living (CIL) or State Council on Disability.

STEPS in DEVELOPING YOUR ACCESSIBILITY STRATEGY

- 1. Develop and implement essential eligibility criteria** (see pages 12-16).
- 2. Use proper language in brochures, Web sites, etc.** Basic guidelines for proper

language can be found on page 6.

- 3. Become familiar with the TTY relay system.** For communicating by phone, people who are deaf or have difficulty speaking often have a teletypewriter or text telephone (TTY). A TTY is a simple, low-cost telecommunications device that allows a person to type the message they want to send, and it is transmitted cross the telephone lines.

Each State provides a relay operator who can be reached by dialing 711. This operator has the equipment to connect a person using a TTY with a person using a voice phone. Through this relay process, a business that does not have a TTY can interact with a customer who uses a TTY. Information about TTY's can be obtained from your local CIL.

- 4. Make your brochures and literature available to people with visual impairments or who are blind.** Keep in mind that 95% of people who have visual impairments are not blind. There are five basic ways to make your literature more available to persons who are blind or have low vision. They include:

- ◆ **Large print.** With the technology of today, it is easy to increase the size of print to make it more readable. For all people, 14 point type makes print user friendly, 18 point type is the legal standard for large print.

- ◆ **Color and contrast.** Use colors that provide a sharp contrast.

- ◆ **Audio cassette.** People who have low vision or who are blind may need an audiocassette of your literature. There are professional services that do this, but it can also be done in-house with a tape machine and a tone indexing microphone.

- ◆ **Personal reader.** Inevitably, there is some information people will need that is not in user-friendly form. In these cases, you can offer to read it to the person directly.

- ◆ **Braille.** A small number of people who are blind read Braille. When permanent rooms are constructed or altered and signs are located at the entrance to such permanent rooms, raised and Braille lettering are required to with the room identification sign located 60" above the floor to the latch side of the door. However, Braille is not otherwise required. Having primary information publications available in Braille is an option that would be well received by those customers who can read Braille. A resource for having Braille copies made of your primary publications is Quikscribe, Inc., Sue Staley, 1723 Sumac Street, Longmont, CO 80501 phone: 303-485-6861. E-mail is quikscribe@earthlink.net

- 5. Remove architectural barriers in existing facilities.** Plan for accessibility when building new facilities or renovating existing facilities. Work with architects and contractors familiar with the ADAAG.

6. **Know your resources.** Knowing who to turn to for more assistance is critical! If you're not sure where to start, consider the Center for Independent Living (CIL) closest to you. A national directory of CILs is available on the web at <http://www.virtualcil.net/cils/>. You could also try your State's office or council on disability and disability issues. These contacts can tell you where to look for a broad range of issues, including architects, sign language interpreters, accessibility consultants.

7. **Include disability awareness in your employee training.** There are many issues your employees **should** be aware of when assisting people with disabilities. A brief list includes:
 - ◆ The increasing number of people with disabilities.
 - ◆ The importance of social integration of people with disabilities.
 - ◆ Proper person first language when referring to people with disabilities
 - ◆ Principles of adaptation of using personal assistive devices or adaptive equipment to perform tasks that would otherwise not be possible do to a disability.
 - ◆ Functional issues that enable a people to ski even though they don't have the ability to walk.
 - ◆ Disability-specific issues that may require special adaptations, i.e. a sign language interpreter.

8. **Use new advertising channels for outreach.** Most people with disabilities recreate with family or friends who may not have disabilities. By including information about the accessibility of your business in your advertising, the potential customers, whose group includes a person with a disability, will be drawn to your business over another business that does not address accessibility up front. Several magazines in the United States focus on people with disabilities, these are listed in the "Resources" section of this document.

9. **Develop community contacts for cooperative marketing and outreach.** No matter where you are located, there are individuals and organizations that are willing to work with you to provide services for people with disabilities. Consider approaching the following types of organizations:
 - ◆ **Centers for Independent Living.** As a national network of independent organizations, the CIL's work to promote independence among people with disabilities. This network is active in every State, and they **should** be able to answer your questions or steer you in the right direction. To locate the nearest CIL in your area, check the national directory at (<http://www.virtualcil.net/cils/>) or contact the National Council on Independent Living at <http://www.ncil.org> or 703-525-3406

(Voice), 703-525-4153 (TTY).

- ◆ **Disability advocacy organizations.** All significant disabilities have one or more advocacy groups associated with them. This includes organizations such as the National Spinal Cord Injury Association, National Head Injury Association, the Federation of the Blind, and the Multiple Sclerosis Society. The Internet can connect you to a wide range of organizations through a quick Web search. By typing in the name of a specific disability one can reach the Web sites of related advocacy groups. In many cases, these organizations also have State and local affiliate groups listed in the phone directory. These groups can be excellent sources of information, networking, and employee training.
- ◆ **Disabled veterans organizations.** These include Paralyzed Veterans of America (PVA) www.pva.org , Disabled American Veterans (DAV) www.dav.org , as well as the Department of Veterans Affairs(VA) www.va.gov
- ◆ **Health care professionals.** Most health care professionals involved with rehabilitation recognize the importance of social integration. Some are also outdoor recreation enthusiasts. The following professional may be especially helpful:
 - Recreation therapists
 - Physical medicine and rehabilitation physicians
 - Physical therapists
 - Occupational therapists
 - Rehabilitation engineering technologist and engineers.

MARKETING SUGGESTIONS

Marketing your programs to better serve people with disabilities is a challenging undertaking, but it can be rewarding. Instead of marketing to people with disabilities, try taking the more universal approach and marketing your services to what we might call “nontraditional” customers. People with disabilities come under this category, as do people who are elderly, families with small children, and many others.

Know Your Customers

Most ski area managers know how well their services meet the needs of their traditional customers. You may not, however, know how your facilities and services will meet the needs of a customer with a disability. To learn more—

1. Read this guidebook.
2. Remember that people with disabilities, like every other customer, respond to your

attitude. You are likely to win their business if you are friendly, open, and willing to look into new and unusual situations.

3. Invite people with various disabilities to visit your facilities and sample your services. Their feedback can help you identify potential barriers to access..
4. Visit with other ski areas that have specific programs to serve people with disabilities. Ask your local permit administrator for names of ski areas who have adaptive programs of this type.
5. Be sure that what you think is accessible really meets the legal criteria for accessibility under the guidelines. Advertising that a program or facility is accessible—only to have a person with a disability discover it is not – will not be good for your business. Verify the accessibility with your local Forest Service permit administrative or accessibility coordinator.

Plan Your Message

Inform people with disabilities that you are interested in serving them.

As with everyone else, people with disabilities are subject to many stereotypes. A non-disabled person planning to sign up with a ski area employee may believe that they will not have the same experience if a person with a disability is included in the group. Therefore, in planning your message, it is critical that you convey to all potential customers that the inclusion of people with disabilities will not diminish their fun and adventure. In short, we recommend that people with disabilities be portrayed as people with the same interests and needs as anyone else. Including photographs of people with disabilities fully participating in something that's fun and adventurous can do this. You can also do this by stating that your programs are open to people with disabilities, but in a subtle manner. Advertising a program "for the disabled" will attract only a small proportion of people with disabilities and very few persons without disabilities. But, a program offered for people with a range of ability levels could be attractive to many participants. If your facilities are accessible, say so.

Know What to Avoid

Sometimes it is just as important to know what to avoid as it is to know what to do. In all cases avoid—

- ◆ **Inappropriate language.** Most people today recognize the need to avoid terms that patronize women, people of color, and other minority groups. The same is true for people with disabilities. Brochure copy that reads "Introducing tour for the able and the handicapped" is just as inappropriate as copy that reads "Introducing tours for housewives."
- **The correct term is person with a disability**—use person first language. As in a person who uses a wheelchair, or a person who is deaf or who is hard of hearing.
- **Do not use the term "handicapped"**—that term comes from "cap in hand" or

begging. The term came into use after the Civil War when returning veterans who were unable to work due to their disabilities were forced to beg on the street.

- **Accessible**—is the term used to describe facilities that comply with the ADAAG.
- ◆ **Patronizing approaches.** References to people with disabilities as “less fortunate,” “less capable,” or “special” should be avoided.
- ◆ **Promises that cannot be delivered.** Undeliverable promises are bad in any business. Do not state that your facilities are totally accessible if they are not. Don’t say you know if you don’t.

FACILITIES and TRANSITION PLANS

EXISTING FACILITIES

Under 7 CFR 15b.18 (a), the program in an existing facility is required to be operated so that “when viewed in its entirety” it is “readily accessible to and usable by” a person with a disability. Can a person with a disability enter the facility in order to participate in the services offered, buy tickets, rent equipment, access restroom facilities, food service, and so forth? Can a person with a disability enter and participate in all aspects of the services inside the facility with the other customers? Evaluate the facility’s accessibility to a person with a mobility, hearing, or visual impairment or learning disability. In addition, that access is to be in the most integrated setting

This does not necessarily mean that every facility, or every part, of an existing facility must be accessible to and usable by a person with a disability. However, the person is to be able to obtain the services offered in the facility just like people who do not have disabilities. This can be done by moving services to accessible buildings, delivery of services to alternate accessible sites, altering facilities to make them accessible, or by constructing new accessible facilities. A permit holder is not required to make structural changes to existing facilities if another effective method can be developed to make the program accessible.

However, in accordance with 7 CFR 15b.18 (b), the method of providing such alternate accessibility to the program is to be chosen based on offering that program “in the most integrated setting to obtain the full benefits of the program.” For example, in an existing multi story building that does not have an elevator but has a restaurant on the top floor, a smaller dining area could be established on the first floor providing the same menu and services offered by the restaurant on the top floor. A caution, this alternative first floor restaurant could not be segregated only for persons with disabilities because that would not meet the legal requirement for the most integrated setting, this first floor service must also be available to people who do not have disabilities.

TRANSITION PLANS

For any inaccessible facility that has to be accessed to participate in the program offered, develop plans about how and when changes will be made to make the facility readily accessible to and useable by persons with disabilities. That plan is your transition plan.

7 CFR 15 b.18 (g) details the steps required to develop a transition plan as follows:

Identify the physical obstacles that limit access to the program by people with disabilities.

1. Describe in detail the methods that will be used to remove those obstacles or to otherwise make those facilities accessible.
2. Specify the schedule for taking the steps necessary to achieve full program accessibility. If the steps will take longer than 1 year, identify the steps to be taken each year.
3. Identify the person responsible for implementation of the plan.
4. Involve people with disabilities in the development of the transition plan.
5. Make the plan available to the public for review.

The Forest Service permit administrator can connect you with a Forest Service accessibility specialist who can review your transition plans with you including the appropriateness of the planned changes and the timeliness of the work planned. Your final transition plans will become part of your special-use authorization file and will be reviewed when your permit is reviewed.

The more developed and extensive your program is, and the more financial resources you have at your disposal, the more accessible your facilities are required to be. For example, a large, profitable business might be required to place an elevator in a multistoried building. However, a small business, with limited resources, might have a plan ready to relocate the services normally provided on the upper level of their building to the first floor, as needed, when a customer with a disability can't climb the stairs to access the services provided upstairs.

If you are a small business with fewer financial resources, and providing accessibility to your facility would not be readily achievable, that is if it would cause an undue financial burden for your business, you will need to identify ways to provide your services without depending on those inaccessible facilities. The key is to find a reasonable way to deliver your programs' services to all people, including people who have disabilities, and to do so in an integrated setting. Your local permit administrator can connect you with a Forest Service accessibility specialist to assist you in determining how you can most cost-effectively provide access to your programs and services.

The Internal Revenue Service allows tax credits and deductions for dollars spent to

improve the accessibility of your business (<http://www.irs.gov>).

7 CFR 15b.18 (c) provides for an exception in extreme cases where the business is small and does not have the resources to provide access to the facility and no other alternative method can be developed to provide access to the program. However, there are specific steps that must be followed. Each step is to be documented and available to the public. If you have fewer than 15 employees:

- 1) Consult with people who have disabilities who are seeking to use your services.
- 2) If those people with disabilities agree that there is no method of providing your services that would not be an undue financial burden or difficult to achieve, refer persons with disabilities, who unable to access your program due to that facility obstacle, to other providers of the same service that are accessible.
- 3) Ensure that there is no additional cost to the person with the disability to use the alternate provider.
- 4) Document the completion of each of these steps and discuss the situation with your Forest Service permit administrator and accessibility specialist for further assistance.

NEW and ALTERED FACILITIES

7 CFR 15b.19 states that each facility or part of a facility constructed by, on behalf of, or for the use of the permit holder shall be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities, if the construction was begun after December 19, 1990.

Under 7 CFR 15b.19, new construction or alteration of facilities at ski areas, that are dependent on a special-use permit from the Forest Service for the operation of their business, are required, under 7 CFR 15b. 19 (c), to follow the ABA accessibility standards, unless “substantially equivalent or greater access to and usability of the building is provided by other methods.” [NOTE: Forest Service guidelines and concepts do not apply directly to a permittee unless supported by laws, regulations or the permit itself. the ADA contains an exemption for requiring an elevator in buildings less than 3 stories. The agency's own training manuals on section 504 state that all new construction must be physically accessible "but this should not be construed to mean an elevator is mandatory."

In the case of alteration per 7 CFR15b.19 (b) states that each facility or part of a facility which is altered by, on behalf of or for the permit holder after the effective date of this part of the CFR (December 19, 1990), in a manner that affects or could affect the usability of the facility shall to maximum extent feasible, altered in such a manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The requirement, under 7 CFR 15b.18, for accessibility to an existing facility is that the

program offered inside that facility be accessible to and usable by a person who has a disability. That access is to be in the most integrated setting. How this legal requirement is implemented is detailed later in this document under Existing Facilities and also under Transition Plans.

The B77.1 ANSI (American National Standards Institute) Standards, of 1999

contains the requirements for the accessibility of ski area facilities including gondolas, chair lifts and so forth.

GENERAL CONSIDERATIONS

Providing for “Adaptive Skiers”

Skiing is an adaptive sport, using skis, snowboards, with bindings for special boots, and poles for balance. Skiers require specialized equipment to participate in this sport. All skiers use adaptive equipment in order to negotiate from the top of the ski hill to the bottom.

Skiers with disabilities also often require specialized equipment. Although the equipment might appear different from what you are used to, it serves the same purpose. Mono skis, bi skis, outriggers, and sit-skis are just some of the types of adaptive equipment. A personal assistant may be needed by a person who is blind, has low vision or who has a cognitive disability such as mental retardation, as part of that skiers “equipment.”

For the purposes of this guidebook we will refer to the equipment used by people with disabilities as “adaptive equipment” and skiers with disabilities as “adaptive skiers.”

Personal Assistants

Adaptive skiers may need to use a guide, personal assistant, or interpreter in order to ski safely, negotiate the lifts, or meet other conditions of the Skier Code. In many cases the person skiing with an adaptive skier enjoys all of the same benefits of the ski experience, as does any other skier.

However, some adaptive skiers require an intensity of assistance that results in a modified skiing experience for the assistant, such as a guide for a blind skier. It is suggested that the ski area consider establishing criteria for guides, personal assistants, and interpreters considered to be part of that skier’s equipment because such an assistant is often responsible for providing assistance constantly during the skiing experience. Determine if a reduced charge or no charge ticket can be made available to that assistant who will not be gaining the same benefit from their experience as will other skiers.

It is also helpful to potential customers with disabilities to provide information about experienced personal assistants that the adaptive skiers can hire, at a reasonable cost, with advanced notice.

Rental of Standardized Adaptive Equipment

If an area has a ski rental program, in order to provide an equal opportunity to participate in that program, under Section 504 and 7 CFR 15b.4 (i), standardized adaptive equipment is to be available for rent with advance notice at a reasonable cost. Advance notice might be on the order of 2 to 5 days. Standardized adaptive equipment would include such things as outriggers, ski tip stabilizers, and blind bibs.

Although adaptive equipment including mono skis, sit and bi skis may be standardized, the technical aspects of fitting for safe operation would require rental staff training/certification not in place at this time.

Standardized Rental Equipment Insurance Issues

It has been reported that some insurance carriers have recommended instruction be required with adaptive equipment rentals. That is discriminatory. Instruction with adaptive equipment rentals can only be required if instruction is required with all rental equipment.

Suggested Ways of Providing Standardized Adaptive Rental Equipment

- Ski shops at the host area can own and rent the adaptive equipment.
- An adaptive program at the host ski area can own and rent the adaptive equipment.
- An adaptive program at a nearby ski area can be contracted to provide adaptive equipment at the host ski area.
- An adaptive equipment manufacturer can rent or lease equipment to the host ski area with advance notice.

Competency Requirements

All skiers should meet the essential eligibility criteria before participating in a program. A separate competency exam cannot be required for adaptive skiers to either ride the lift or ski, unless all skiers are required to take the same competency exam. There are areas, such as terrain parks, where skiers are tested for skills before entering. This is acceptable if all skiers are tested, as such testing would be part of the essential eligibility criteria.

Lift Safety

Adaptive skiers cannot be required to fasten themselves to the lift, when skiing independently, unless all skiers are required to do so. However, a skier may request to be fastened to the chair for personal safety. An adaptive skier could also request that the lift be slowed or stopped for loading.

Because the instructor is often assuming more responsibility for the skier in a lesson situation, ski school instruction policies with regard to safety and adaptive skiers can vary. Therefore, the instructor's method for ensuring that the adaptive skier can load, ride, and unload the lift safely might be to use a tether line or safety retention strap. When skiing with an instructor, the ski school's safety policy regarding fastening to the lift should be followed.

Instruction

At areas with ski instruction programs, in order to provide an equal opportunity to participate in that program, under Section 504 and 7 CFR 15b.4 (i), instruction should be

available at all levels for adaptive skiers, who meet the essential eligibility criteria established by the ski area. A specific adaptive program is not required. Advance notice can be required for all levels of adaptive instruction (2 to 5 days is recommended).

Certification in adaptive instruction for your instructors is available through the Professional Ski Instructors of America (PSIA). Contact PSIA at <http://www.psia.org> or 303-987-9390. Professional Ski Instructors of America (PSIA) certified instructors can take a 1- to 2-day PSIA Adaptive Clinic in a specific discipline to obtain the skills needed to provide instruction to adaptive skiers.

For information about existing adaptive ski programs contact the National Ski Areas Association at <http://www.nsaa.org> or call 303-987-1111.

Instruction for Skiers who are Blind or have Low Vision

The instructor is ideally the guide for the skier who is blind or has low vision. However, if the skier who is blind or has low vision brings their own guide, at their own expense, it is important to keep in mind that serving as a guide for a person who is blind requires an intensity of assistance that results in a modified skiing experience for the guide.

It is suggested that the ski area consider establishing criteria for guides, perhaps considered to be part of that skier's equipment, and determine if a reduced or no charge lesson or lift ticket can be made available to that assistant who will not be gaining the same benefit from their experience as will other skiers. For example, if the guide is not receiving instruction during a ski lesson, that guide would not be receiving the same benefit as other participants in the instruction. However, there is no legal requirement for a ski area to provide a reduced or no charge lessons and tickets, such action is at the discretion of the ski area's management.

Instruction for Skiers who are Deaf

Ideally, the instructor would be the interpreter for the skier who is deaf. Under the requirements for providing equal program access, the ski area may be asked to provide an interpreter for instruction and that cost would be at the expense of the ski area

Therefore if a skier who is deaf brings their own interpreter, at their own expense, the ski area should have a policy in place to address charges for ski instruction. Since the ski area will be saving a considerable expense, by not having to hire an interpreter, it is suggested there be no lesson or lift charges for the interpreter. However, there is no legal requirement for a ski area to provide a reduced or no charge lessons and tickets, such action is at the discretion of the ski area's management.

Instruction for Sit-Skiers, Mono-Skiers, and Bikers

Ideally, the instructor generally provides personal assistance needed by the adaptive skier. If a skier, who has a mobility impairment, brings a personal assistant, at their own expense, the ski area should have a policy in place to deal with the lesson and lift charges.

It is suggested that the ski area consider establishing criteria for such assistants, perhaps considering them to be part of that skier's equipment, and determine if a reduced charge

or lesson and lift no charge ticket can be made available to that assistant who will not be gaining the same benefit from their experience as will other skiers. For example, if the assistant is not receiving instruction during a ski lesson, but simply assisting the skier who has the mobility impairment, that assistant would not be receiving the same benefit as other participants in the instruction. However, there is no legal requirement for a ski area to provide a reduced or no charge lessons and tickets, such action is at the discretion of the ski area's management.

Lesson Rates and Discounts

An adaptive skier who meets the essential eligibility criteria for group instruction, and therefore can expect to progress with the group at an average or above average rate, must be permitted to take a group lesson. If the adaptive skier does not meet the essential eligibility criteria for group instruction, the adaptive skier would need to meet the essential eligibility criteria for individual instruction. The lesson rates can be commensurate with the type of instruction received, i.e. group or individual instruction, unless the ski area sets a policy of reduced rates in order to market to adaptive skiers. However, there is no legal requirement to provide a reduced rate for adaptive skiers.

When considering rates for adaptive skiers, keep in mind that only 35%* of people with disabilities are employed, whereas 78% of people without disabilities are employed. Therefore, people with disabilities often have less discretionary income available. While ski areas are not social welfare agencies, keep in mind that each adaptive skier comes generally with two or more friends or family member skiers who do not have disabilities, but who also buy lift tickets, rent equipment, and purchase food. The entire group will utilize ski areas that are most accommodating for people with disabilities.

* National Organization of Disability and Harris Poll 2000 survey

Proof of Disability

If a separate fee structure or discounts are available for adaptive skiers, the ski area may require "proof of disability" in order to qualify for such advantages. A driver's license noting restrictions, or a Golden Access Passport (issued by Federal land management agencies for accessing national fee areas), along with another form of photo ID to ensure the person to whom the Golden Access Passport is issued is the person requesting the discount, are forms of identification that are often used to identify a person with a disability. The "disabled" parking placard is not a reliable form of identification because it does not identify the person to whom the State motor vehicle department issued that parking placard.

Often a "proof of disability" is not needed because the individual has a physical disability, amputation, paralysis, etc. that is obvious.

You are encouraged to approach proof of disability with sensitivity toward your customers. As with other aspects of providing for accessibility, employee training is crucial. If you choose to require proof of disability, ensure that all employees are familiar with whatever process you put in place. For example, post information about discounts offered and the proof of disability accepted at each ticket window, on your website, and in your printed brochures.

Related Accommodations

Ski Storage

If secured ski storage is provided, that type of storage is also to be available for adaptive skiers to store their adaptive equipment or wheelchairs while they are skiing. The charge for storage of adaptive equipment or wheelchairs is to be the same as for other ski storage.

Day Care

Children with disabilities must be accepted unless they do not meet the essential eligibility criteria of the program. The day care facility is also required to be readily accessible so that a parent or guardian with a disability can utilize the facility. The document entitled “Child Care Centers and the ADA” is available from the Department of Justice on their website at <http://www.usdoj.gov> or by calling 800-514-0301 (Voice) or 800-514-0383 (TTY).

Food Services

All food service provided at the ski area must be accessible to people with disabilities. The ADAAG and ADAADAG provide specific information about accessibility in restaurants and cafeterias. Restaurants are not required to provide for special diets.

In accordance with 7 CFR 15b.18 (b), in an existing facility, if the food service area is not accessible, alternate accessibility can be provided. However, the method of providing such alternate accessibility to the program is to be chosen based on offering that program “in the most integrated setting to obtain the full benefits of the program.” For example, in an existing multi story building that does not have an elevator but has a restaurant on the top floor, a smaller dining area could be established on the first floor providing the same menu and services as that restaurant. A caution, this alternative first floor restaurant must provide services for all customers, those with and without disabilities, in order to meet the legal requirement for the integrated setting.

Transportation

If fixed route transportation is provided it must be accessible as outlined in Title III of the ADA. Information about public transportation for people with disabilities can be obtained from the Federal Transit Administration on their website at <http://www.fta.dot.gov> or by calling 888-446-4511 (Voice) or 800-877-8339 (TTY). If local on demand shuttle service is provided, work with the local accessibility resources, the CIL, Forest Service accessibility specialist and so forth, to determine how to provide readily accessible and useable shuttle transportation for all skiers including skiers who have disabilities.

Lodging Accommodations:

If provided, lodging must be accessible. Information about complying with accessibility laws as they relate to lodging can be obtained from the U.S. Department of Justice on their website at <http://www.usdoj.gov> or by calling 800-514-0301 (Voice) or 800-514-0383 (TTY).

FREQUENTLY ASKED QUESTIONS

1. What Do I Have To Do To Reduce the Risk of a Lawsuit?

There is no foolproof way to avoid a lawsuit. However, if you make a good faith effort, your odds of being successfully sued should be reduced.

The bottom line in avoiding an accessibility-related lawsuit is to not deny services or accommodations to anyone solely because that person has a disability. You may decide that you cannot safely and effectively serve someone, but this decision must be based on an objective process that is equally applied to everyone—through the essential eligibility criteria. Also, you may have to change a policy, modify a practice, or provide an accommodation if these changes are deemed reasonable.

Most importantly, you should realize that people with disabilities are, above all else, people. If you or your employees are hostile, unwilling to listen, and prone to react based on stereotypes, you are much more likely to be sued than when people with disabilities are with treated with dignity and respect. As a business, your attitude toward your customers is perhaps the most important determinant in their evaluation of your services.

2. What Am I Required To Do to My Facilities Under the ADA, Section 504 and 7 CFR 15b?

Determine the accessibility of your ski area's facilities and services. Can a person with a mobility, hearing, or visual impairment or learning disability use the facilities and services offered by your business? According to the ADA and 7 CFR 15b, all places of public accommodation are required to be readily accessible to and usable by people with disabilities. Under 7 CFR 15b.19 (c), new construction and alterations to existing structures are required to comply with the accessibility guidelines under the Architectural Barriers Act (ABA), or the ABA section of the Americans with Disabilities Act/Architectural Barriers Act Accessibility Guidelines (ADAABAG),.

The ADA and 7 CFR 15b require that public accommodations remove architectural barriers in existing facilities where readily achievable. Readily achievable is defined as easy to accomplish, without much difficulty or expense. The basic facility requirements are access to the program provided inside the facility, accessible parking, restrooms, drinking water, and telephones. Be aware, though, that the overall financial resources of the ownership are considered in determining whether an action is "readily achievable."

The more developed and extensive your program is, and the more financial resources you have at your disposal, the more accessible your facilities are required to be. A small business, with few financial resources, may be able to meet the readily achievable legal criteria by developing an alternative method of providing access to the program in the facility. A word of caution: under 7 CFR 15b.18(b)(a), any alternative program access is required to be provided in the most integrated setting, that is for people with and without disabilities.

If you have a small business with fewer financial resources, and providing accessibility to your facility would cause an undue financial burden for your business, you will need to identify ways to provide your skiing program without depending on those inaccessible facilities. The key is to find a reasonable way to deliver your programs' services to all people, including people who have disabilities, and to do so in an integrated setting. Your local permit administrator can connect you with a Forest Service accessibility specialist to assist you in determining how you can most cost-effectively provide access to your programs and services.

7 CFR 15 b 8 (c) and 15b.18(g) require any facility or program/service that is not now accessible to develop plans as to how and when the changes will be made to make them accessible for all people. These are your transition plans. The Forest Service permit administrator can connect you with a Forest Service accessibility specialist who can review your transition plans with you including the appropriateness of the planned changes and the timeliness of the work planned. Your final transition plans will become part of your special-use authorization file and will be reviewed when your permit is reviewed.

The Internal Revenue Service allows tax credits and deductions for dollars spent to improve the accessibility of your business. The two tax incentives are available to businesses to help cover the cost of making access improvements. The first is a tax credit for small businesses that can be used for architectural adaptations, equipment acquisitions, and services such as sign language interpreters. The second is a tax deduction, for businesses of any size, that can be used for architectural or transportation adaptations.

For more information on these tax incentives contact the IRS at (<http://www.irs.gov>). The Department of Justice (DOJ) publishes an *ADA Tax Incentive Packet for Businesses* available from DOJ through their web page <http://www.usdoj.gov/crt/ada/adahom1.htm> or by calling DOJ at 800-514-0301.

Also to ensure appropriate access to the program, essential eligibility criteria must be established for the various programs provided by the ski area.

3. What about the accessibility of gondolas and lifts.

The ANSI (American National Standards Institute) B77 Aerial Tramway Standards, of 2005, contain the requirements for accessibility of these facilities. The complete ANSI B77 Aerial Tramway Standards are available at <http://www.beneficialdesigns.com/skiaccess/skiaccess.html#ANSI-B77>

- In cabins for trams and gondolas (new construction), the minimum opening width shall be 32 inches; the horizontal gap shall not be greater than 1 inch, and the height of cabin floor and platform shall be within +/- 1/2 inch or have other provision for independent loading (X.1.4.4.2).

- Loading areas for chair lifts must have at least one point of access with a minimum clearance width of 36 inches to accommodate skiers using adaptive equipment (X.1.1.9.1).
- A sign stating the seat height, +/- 2 inches, must be posted at each chair lift used for skiing operations (X.3.1.1.2).
- Each lift must have an evacuation plan that includes methods of evacuation to be used for incapacitated passengers, common adaptive equipment, and non-ambulatory passengers (X.3.2.5.7).
- All passengers using lifts shall be presumed to have sufficient physical dexterity or personal assistance to negotiate and be safely evacuated from the lift (X.3.6.1).

4. How do the draft RESNA Adaptive Sports Equipment Standards address accessibility issues?

The Rehabilitation Engineering & Assistive Technology Society of North America (RESNA) is a standards organization accredited by the American National Standards Institute (ANSI). RESNA has developed draft standards that will be submitted to ANSI for final approval. These draft standards require adaptive sit-skis, mono-skis, and bi-skis that comply with the draft standards have an evacuation harness and retention strap that has been tested for static and impact loading. The manufacturer is also required to disclose the loading height of the equipment to determine compatibility with a chair lift. The draft standards are available at <http://www.beneficialdesigns.com/skiaccess/skiaccess.html#adaptive>

5. What if I Can't Make My Program Accessible Because I Can't Make My Facilities Accessible?

7 CFR 15b.18 (c) provides for an exception in some cases where the business is small and does not have the financial resources to provide access to the facility and no other alternative method can be developed to provide access to the program. However, there are specific steps that must be followed. You must document each step for the Forest Service and for the public that will likely question your actions.

If you have fewer than 15 employees:

- Consult with the customers who have disabilities who are seeking to use your services.
- If those customers with disabilities agree that there is no method of providing your services that would not be an undue financial burden for your business or difficult to achieve, then refer persons with disabilities to other providers of the same service that are accessible.

- Ensure that there is no additional cost to the person with the disability to use the alternate provider.
- Document the completion of each of these steps and discuss the situation with the Forest Service permit administrator and accessibility specialist.

6. What Are Essential Eligibility Criteria?

Essential eligibility criteria are a listing of the basic functions required to participate in an activity. Each ski area should develop nondiscriminatory essential eligibility criteria and apply them to ALL participants. Keep in mind that a person that under the ADA, Section 504, and 7 CFR 15b you may not deny participation to any person unless they do not meet the nondiscriminatory essential eligibility criteria for the program. If your ski area does not have essential eligibility criteria, you are at risk of not knowing, and therefore not being able to support the decision as to when a person is legally qualified to participate or when that person can be denied participation. Such lack of clear essential eligibility criteria can be problematic and may increase the potential for a discrimination claim. Instructions for developing essential eligibility criteria are provided in this document.

7. Do I Have To Let People With Disabilities Ski?

Yes. An underlying concept of accessibility law is that decisions about participation are not to be based on stereotypes. You cannot refuse to allow a person to ski or participate in lessons simply because that person has a disability.

The only time you can refuse to allow a person to participate is if that person does not meet the essential eligibility criteria for that program or activity.

8. Our Ski Area Offers Lessons. Do I Also Have To Offer Adaptive Ski Lessons?

Yes, you must be prepared to provide services to anyone who meets the non-discriminatory essential eligibility criteria developed by your ski area. At areas with ski instruction programs, in order to provide an equal opportunity to participate in that program, under Section 504 and 7 CFR 15b.4 (i), instruction is to be available at all levels for adaptive skiers who meet the essential eligibility criteria established by the ski area. A specific adaptive program is not required. Advance notice can be required for all levels of adaptive instruction (2 to 5 days is recommended).

Certification in adaptive instruction for your instructors is available through the Professional Ski Instructors of America (PSIA). Contact PSIA at <http://www.psia.org> or 303-987-9390. Professional Ski Instructors of America (PSIA) certified instructors can take a 1- to 2-day PSIA Adaptive Clinic in a specific discipline to obtain the skills needed to provide instruction to adaptive skiers.

9. If a skier with a disability cannot demonstrate basic skills needed for a group ski class, must specialized instruction be available (which usually results in a private lesson setting) at the group lesson rate?

An adaptive skier who meets the essential eligibility criteria for group instruction, and therefore can expect to progress with the group at an average or above average rate, must be permitted to take a group lesson. If the adaptive skier does not meet the essential eligibility criteria for group instruction, the adaptive skier would need to meet the essential eligibility criteria for individual instruction. The lesson rates can be commensurate with the type of instruction received, i.e. group or individual instruction, unless the ski area sets a policy of reduced rates in order to market to adaptive skiers. However, there is no legal requirement to provide a reduced rate for adaptive skiers.

When considering rates for adaptive skiers, keep in mind that only 35%* of people with disabilities are employed, whereas 78% of people without disabilities are employed. Therefore, people with disabilities often have less discretionary income available. While ski areas are not social welfare agencies, keep in mind that with each adaptive skier comes generally two or more friends or family member skiers who do not have disabilities, but who also buy lift tickets, rent equipment, and purchase food. The entire group will utilize the ski areas that are most accommodating for people with disabilities.
* National Organization of Disability and Harris Poll 2000 survey

10. Are ski areas that have summer mountain bike rentals also required to have hand cycles available to rent for people without disabilities?

The primary question is whether it is readily achievable (not an undue financial burden based on the ski area's resources) to provide that rental option, similar to the more readily achievable adaptive skiing equipment rental from adaptive programs, other areas, adaptive equipment manufacturer rentals, and so forth? If hand cycles are readily achievable then providing that service is important. Similar to adaptive ski equipment rental provisions the ski area could post an advanced notice requirement for the adaptive equipment rental, but again the question comes down to the how readily achievable is the equipment.

11. Must wheelchairs be available at all restaurants on the mountain so that a skier using adaptive equipment can utilize the services of each of the restaurants?

7 CFR 15b.18, and also Title III of the ADA, require the facility to be readily accessible to and useable by individuals with disabilities so that all can access the activities or services provided in that facility. So what activities or services are provided in the restaurants on the mountain, food service? restrooms? a place to get warm? Do all of the restaurants provide the same services? Are the restaurants all located together? Or do they offer different services and are in different locations? Those answers need to be determined. And then how a person will access those services comes up next. If other customers ski to entrance, take off their skis and walk into the restaurant, how will a person who arrives by sit-ski access the services provided in the restaurant. The ski area may determine the most readily achievable method of providing access to the services would be to place a wheelchair at the restaurant, but having a wheelchair at every restaurant is not in itself a legal requirement.

12. Even though I don't permit animals in my business, do I have to allow a person to bring in their "service animal"?

In most cases service animals are permitted to be with the person they assist. For further information, see the web based publication "Commonly Asked Questions about Service Animals," from the U.S. Department of Justice, on the ADA information home page at <http://www.usdoj.gov/crt/ada/adahom1.htm>.

13. Does Inclusion of People With Disabilities Affect Liability Insurance Coverage?

There are two issues here—coverage and premium. Carefully review your policies to confirm limits and exceptions to coverage. On the question of premiums, your insurance company can charge for service and coverage as it chooses. However, you can ask to see the actuarial tables—the factual information used to support the insurance companies increased premium—to determine if the insurance company is basing its decision on fact or on assumption.

14. What's the Balance between Personal Responsibility and Ski Area Responsibility?

The responsibilities of the individual participant and the ski area are the same whether the participant has a disability or does not. Participant responsibilities should be described in the essential eligibility criteria for the program.

15. Is There Really a Market for This?

Yes. In 2004, there were 54 million people with significant disabilities. The number of people surviving serious injury continues to increase with advances in medicine. Each year close to 3 million people experience an injury that substantially reduces their mobility. Additionally, as life expectancy increases, the number of individuals with reduced physical abilities will continue to increase.

Also people with disabilities recreate with their families and friends. They will go together to places that provide good accessibility, so all can participate. One ski areas' data shows that each guest with a disability that its mountains as their destination of choice was accompanied by an additional 3.8 people. All purchased lift tickets, food, and so forth. The skier with the disability spent an average of 4 days in ski school, skiers without disabilities average 2 days, and stayed 5.5 days in local facilities.

In addition, our population is aging. Any improvements to accessibility will also benefit this segment of society as they seek to continue to utilize your ski area programs and services as they get older.

16. What Do My Employees Need To Know?

All employees should know enough about people with disabilities to make informed decisions about how to best serve your clients. Educating employees about people with disabilities can eliminate many negative stereotypes and perceptions. Appropriate disability awareness training should be made available to all employees as part of the orientation process. Many local disability advocacy groups will provide this training to your employees for a small fee.

17. How can I help my employees be interested in also serving clients with disabilities?

Most often, programs serving people with disabilities fail because of a problem many ski areas face in seasonal operations—rapid employee turnover. All the training and facility modifications will be wasted if the employees are not enthusiastic or interested in serving all people, including people with disabilities. Some practical methods of improving employee attitudes and minimizing the problem of rapid employee turnover are:

- ◆ Evaluate the interest of employees and select one interested person who is likely to remain employed with you to act as coordinator of these new integration efforts.
- ◆ Provide that individual with the initial training to integrate people with disabilities and then get that person to train and assist other employees.
- ◆ Involve employees in planning and setting up outreach plans and making accessibility improvements at facilities.
- ◆ Revise job descriptions to include working with nontraditional customers.
- ◆ Form a network with agencies that serve people with disabilities.

18. What Can I Do To Get Started?

A small investment in equipment, facilities, and training can greatly benefit your business. Here are some additional suggestions:

- Develop or review registration procedures that allow you to learn more about all of your customers up front, without invading their privacy.
- Develop a catalog of your services and facilities so you can give everyone, including people with disabilities, accurate information as they decide whether to take advantage of your services. You may want to provide this information in printed brochures and on your web page.
- Provide disability awareness and customer service training for all employees.
- Purchase a TTY and provide training on the TTY for communicating by phone with people who are deaf or do not speak, or provide Relay System training to all employees who deal with customers on the phone. If you purchase a TTY, advertise that you have a TTY in your brochure, website, and anywhere you list your voice telephone number. This will send an important message that you are open to serving all customers.

Perhaps the single, most important thing you can do is to make sure you and your employees have a positive attitude toward serving people with disabilities. Instead of looking at accessibility laws as simply more government requirements, look at it as a persuasive argument to get you moving in the direction the market is moving anyway.

19. Where Can I Get More Information About Accessibility Laws?

For information about how the ADA, Section 504 and 7 CFR 15b apply to business operating under a permit from the Forest Service, contact your permit administrator and request the assistance of a Forest Service accessibility specialist.

20. How Can the Forest Service Help Me?

The Forest Service has accessibility specialists who can provide information in response to accessibility questions. Contact your Forest Service permit administrator.

Appendix A—Information

The following are resources for information and publications that you may find useful in your efforts to serve people with disabilities, as well as to enhance overall customer service.

Web Site and Phone Support

ADA Information U.S. Department of Justice: (<http://www.ada.gov>)

For technical assistance on the ADA provisions that apply to businesses, to order publications and many other resources. You can also call the ADA Information Line at 800-514-0301 (Voice) or 800-514-0383 (TTY).

ADA Disability and Business Technical Assistance Center

The number 800-949-4ADA (V/TTY) will automatically connect you to the regional center nearest you to help you with your ADA business related questions. The Web site is <http://www.adata.org>.

ANSI B77 Aerial Tramway Standards

(benficialdesigns.com/skiaccess/skiaccess.html#adaptive) This website also include the draft ANSI standards for adaptive sports equipment.

Architectural and Transportation Barriers Compliance Board, also known as the **Access Board** (<http://www.access-board.gov>) For technical assistance on ADAAG, call 800-872-2253 (Voice) or 800-993-2822 (TTY).

Disabled Sports USA (www.dsusa.org)

DSUAS is the governing body for winter sports for athletes with disabilities. This organization is the source for information about ski competition for athletes with disabilities. Phone=301-217-0960.

Federal Transit Administration (<http://www.fta.dot.gov>)

For questions about public transportation for people with disabilities, call the ADA Assistance Line at 888-446-4511 (Voice) or 800-877-8339 (TTY).

Forest Service – Accessibility (<http://www.fs.fed.us/recreation/program/accessibility>)

For information about accessibility on public lands and for resources as well as for information concerning a local Forest Service accessibility specialist, contact Janet Zeller, Forest Service Accessibility Program Manager at jzeller@fs.fed.us or call 202-205-9597.

Internal Revenue Service (<http://www.irs.gov>)

For information about tax credits and deductions that can assist businesses in complying with the ADA, call 800-829-1040 (Voice) or 800-829-4059 (TTY). The Department of Justice (DOJ) publishes an *ADA Tax Incentive Packet for Businesses* available from DOJ through their web page <http://www.usdoj.gov/crt/ada/adahom1.htm> or by calling DOJ at 800-514-0301. Also, be sure to contact your tax professional.

National Council on Independent Living (<http://www.ncil.org>)

For information about this membership organization of independent living centers, call 703-525-3406 (Voice) or 703-525-4153 (TTY).

Professional Ski Instructors Association (PSIA) <http://www.psia.org> the Adaptive branch of this organization is an excellent resource for information concerning existing adaptive programs as well as for certification in adaptive instruction for your instructors. Contact PSIA at or 303-987-9390. Professional Ski Instructors of America (PSIA) certified instructors can take a 1- to 2-day PSIA Adaptive Clinic in a specific discipline to obtain the skills needed to provide instruction to adaptive skiers. The PSIA Adaptive information and contacts can be accessed by either clicking on the word Adaptive on the PSIA home page, or by using the link directly to the Adaptive section at http://www.psia.org/psia_2002/adaptive_t.asp

Glossary

7 Code of Federal Regulations (CFR) Part 15b – The regulations implementing Section 504 of the Rehabilitation Act in the programs and activities of entities which operate under a permit, or that receive financial assistance, from a USDA agency. These provisions address program accessibility, requirements for accessible programs in new, altered and existing facilities, accessibility transition planning, accessible communication requirements, and compliance procedures.

ABA – the Architectural Barriers Act of 1968 requires that all facilities constructed, purchased, rented, or leased by a Federal agency, or by an entity operating under a permit from a Federal agency, be accessible to persons with disabilities.

ADA—The Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability. The ADA applies to State and local government services, public accommodations, public transportation, and commercial establishments.

ADAABAG – The American with Disabilities Act Architectural Barriers Act Accessibility Guidelines. These guidelines were released on July 26, 2004 and update

and merge the ADAAG and the UFAS. Federal entities are to follow the scooping under the ABA.

ADAAG—The Americans with Disabilities Act Accessibility Guidelines provide standards for accessible design. New construction and alterations are subject to these standards.

Adaptive Equipment—For the purposes of this guidebook, “adaptive equipment” is equipment used by people with disabilities to participate in skiing.

Nondiscriminatory Essential Eligibility Criteria—Nondiscriminatory essential eligibility criteria are a listing of the basic functions required to participate in an activity. The ADA states that public accommodations cannot impose or apply eligibility criteria that screen out or tend to screen out individuals with disabilities (paraphrased from ADA 28 CFR, Ch. 1 §36.301).

PSIA—Professional Ski Instructors of America. Contact PSIA at <http://www.psia.org> or 303-987-9390.

Readily Achievable—Readily achievable means the action can be easily accomplished and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include the nature and cost of the action needed and the overall financial resources of the site’s ownership (paraphrased from ADA 28 CFR, Ch. 1 §36.401).

Section 504 - Section 504 of the Rehabilitation Act of 1973. prohibits federal agencies from discriminating against any person with a disability in the delivery of their programs and activities or Federal assistance.

TTY (text telephone)—A device for communicating with people who are deaf or nonvoice by typing messages back and forth.

Undue Burden—Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include the nature and cost of the action needed and the overall financial resources of the site or sites involved (paraphrased from ADA 28 CFR, Ch. 1 §36.401).