



To Whom it May Concern:

The National Association of the Deaf (“NAD”) seeks to ensure that all passenger vessel owners and operators (“PVOs”), which includes American-flagged cruise ships as well as foreign-flagged cruise ships that dock at United States ports, understand their legal obligations with respect to serving deaf and hard of hearing passengers. The Americans with Disabilities Act (“ADA”), the United States Department of Justice (“DOJ”) regulations, and the United States Department of Transportation (“DOT”) regulations mandate that passenger vessels ensure effective communication with individuals who are deaf or hard of hearing.

PVOs that violate such provisions are subject to legal action and have been the focus of litigation by the DOJ as was the case in *United States v. Carnival Corporation*. See *United States v. Carnival Corp.* (2015), No. 202-17M-206.

This letter contains information for PVOs to understand the requirements for serving deaf and hard of hearing passengers pursuant to the ADA, the DOJ regulations, and the DOT regulations. The relevant provisions are found in Title III of the ADA and its implementing regulations. See Americans with Disabilities Act, tit. 3, 42 U.S.C. §§ 12181-12189 (2020); 28 C.F.R. §§ 36.101-36.607 (2016); 49 C.F.R. §§ 39.1-39.109 (2010). These provisions show that:

- 1) Title III of the ADA applies to all “places of public accommodation” and “any person who owns, leases (or leases to), or operates a place of public accommodation,” including all places of lodging, establishments serving food or drink, places of entertainment, terminals used for public transportation, places of recreation, and places of exercise. See 42 U.S.C. §12181(7)(A)-(C), (G), (I), (L).
 - a. In *Spector v. Norwegian Cruise Line*, the U.S. Supreme Court held that Title III of the ADA “is applicable to foreign ships in United States waters to the same extent that it is applicable to American ships in those waters.” See *Spector v. Norwegian Cruise Line*, 545 U.S. 119 (2005); see also *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000).
 - b. The number of employees associated with the PVO and the nature of the event(s) are irrelevant to whether the entity must follow Title III of the ADA.
- 2) PVOs must furnish (that is, obtain and pay for) any auxiliary aid or service that is necessary to achieve effective communication with a deaf or hard of hearing passenger. See 42 U.S.C. § 12182(b)(A).



- a. Whether a particular auxiliary aid or service, such as a sign language interpreter, is necessary depends on a variety of factors, including the length and complexity of the interaction, and the effectiveness of any alternative used.
 - b. To be effective, an auxiliary aid must ensure that the deaf or hard of hearing passenger can both understand and participate in events, excursions, presentations, emergency and non-emergency announcements, and discussions or other interactions.
 - c. Auxiliary aids and services must be furnished regardless of the number of passengers who have requested such services.
 - d. The deaf population varies greatly in its ability to use sign language, and to communicate in spoken or written English. Do not assume that an auxiliary aid or service that is effective for one individual will be effective for another individual.
- 3) Auxiliary aids and services include TTY/TDD equipment, videophones, amplified telephones, visual alert alarms, captioning of audio-visual material, closed captioning on televisions, and assistive listening systems. Auxiliary aids and services also include qualified sign language interpreters, oral interpreters, cued speech transliterators, tactile interpreters, Certified Deaf Interpreters (“CDIs”), and text-based services such as Communication Access Realtime Transcription (“CART”). *See* 28 C.F.R. § 36.303(b).
- a. Any interpreter provided must also be qualified.
 - i. To be “qualified”, an interpreter must be able to “interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.” 28 C.F.R. § 36.104.
 - ii. The following individuals are not “qualified” interpreters: (1) an employee or staff member who knows basic sign language; (2) family members, adult companions, and minor children of the attendee, except in limited circumstances, including certain types of emergencies. *See* 28 C.F.R. §36.303(c).
 - b. Realtime transcription services, such as CART, must be provided by trained professionals.



- i. It is unlikely that an untrained individual can type quickly enough to ensure effective communication during a presentation or group discussion.
 - ii. Voice recognition software currently is not accurate enough to ensure effective communication, unless used by a professional “voice writer.”
 - c. Computer-generated automatic captioning generally is inaccurate and unreliable, and, as a result, does not ensure effective communication. Best practice dictates that quality captioning for effective communication should be done by qualified captionists and must be:
 - i. Accurate, matching the spoken words or lyrics in their original language in the order spoken, providing nonverbal information that is not observable (e.g. identity of speakers, sound effects), and legible with appropriate font size and spacing between words for readability as well as providing appropriate capitalization and punctuation;
 - ii. Synchronous, coinciding with the corresponding spoken words and sounds to the greatest extent possible;
 - iii. Complete, running from the beginning to the end of the program to the full extent possible; and
 - iv. Adequately positioned, viewable, and not blocking other visual content on the stage or screen (e.g. graphics and credits). *See* 47 C.F.R. § 79.1 (2003); *see also* Web Content Accessibility Guidelines 2.1 (2018).
 - d. A PowerPoint presentation, presenter’s notes, or frozen transcript does not satisfy ADA requirements for a live or taped event.
 - e. Seating arrangements and lighting must ensure that there is a clear line of sight to the interpreter or captioning, the interpreter or captioning is clearly visible by all deaf or hard of hearing attendees, and the deaf or hard of hearing attendees’ view of the program is unobstructed (e.g. view of the stage is not blocked by objects such as columns or sound equipment or by the interpreter or captioning).
- 4) PVOs may not charge the individual requesting the auxiliary aid or service for the provision of these services. *See* 28 C.F.R. § 36.301(c).



- a. The cost of providing auxiliary aids and services should be viewed as part of overhead. Thus, the PVO may increase charges for all passengers to cover the cost of an interpreter or CART provider but may not bill the deaf or hard of hearing passenger exclusively.
 - b. The PVO may not require the deaf or hard of hearing passenger to bring an interpreter or CART provider with them.
 - i. The PVO is responsible for providing this service and any associated costs such as but not limited to providing room and board for the interpreters or CART providers.
- 5) PVOs must ensure that no deaf or hard of hearing passenger is “excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.” *See* 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(a).
 - a. PVOs must ensure that deaf and hard of hearing passengers can fully and equally enjoy any goods, services, facilities, privileges, advantages, or accommodations. *See* 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301.
 - b. Deaf and hard of hearing passengers may not be refused admission to or asked to participate in an event, excursion, presentation, or discussion in an alternative manner due to their need for auxiliary aids and services.
 - c. A passenger vessel with multiple stages, events, or excursions must provide auxiliary aids and services at all stages, events, and excursions, so that all deaf and hard of hearing passengers have the same options as all hearing attendees.
- 6) Although the ADA does not require PVOs to furnish auxiliary aids and services when doing so would create an undue burden, such a situation is unlikely to arise in the context of a single trip, especially if such trips are scheduled in advance. *See* 28 C.F.R. § 36.104.
 - a. The nature of the burden is measured in the context of the entity’s overall resources, including the resources of any parent entities.



- b. That the cost of providing auxiliary aids and services exceeds the price that the deaf or hard of hearing passenger pays for a trip does not mean that providing them results in an undue burden.
 - c. A lack of advance notice does not excuse the PVO from making best efforts to secure the aid or service.
 - d. To ensure that certain auxiliary aids and services (e.g., sign language interpreters) can be secured, the aid or service must be procured as soon as the deaf or hard of hearing individual makes their request.
 - e. PVOs are encouraged to consult a tax advisor regarding available tax credits and other positive tax consequences of providing auxiliary aids and services. See IRS Tax Credits and Deductions, ADA.GOV, <http://www.ada.gov/taxcred.htm>.
- 7) The DOT regulations mandate that PVOs must make reasonable modifications in policies, practices, or procedures when such modifications are necessary to accommodate passengers with disabilities. PVOs must not discriminate against any qualified individual with a disability, by reason of such disability, with respect to the passenger's use of a vessel. 49 C.F.R. § 39.21(a)(1)(b)(1).
 - a. These regulations apply to any PVO that is:
 - i. A public entity that provides designated public transportation; or
 - ii. A private entity primarily engaged in the business of transporting people whose operations affect commerce and that provides specified public transportation;
 - iii. A foreign-flagged passenger vessel that picks up passengers at a port in the United States, its territories, possessions, or commonwealths. 49 C.F.R. 39.5(a)(b).
 - b. PVOs must "furnish appropriate auxiliary aids and services where necessary to afford a [passenger] with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity." 49 C.F.R. § 39.51(a). A PVO must "furnish appropriate auxiliary aids or services where necessary to



ensure effective communication” with a deaf or hard of hearing passenger. 49 C.F.R. § 39.51(b), (d).

- i. In determining what type of auxiliary aid or service is necessary, primary consideration must be given to the request of the passenger with the disability. 49 C.F.R. § 39.51(a). Given that the nature of a cruise does not give the PVO or the passenger the opportunity to replace an inappropriate auxiliary aid or service, it is critically important for the PVO to honor the request of the passenger with the disability.
 - ii. A qualified on-site sign language interpreter is one such auxiliary aid or service. 49 C.F.R. § 39.3.
 - iii. In the process of providing the passenger with auxiliary aids or services, the PVO may not charge the passenger extra fees. 49 C.F.R. § 39.43.
- 8) Under some circumstances, multiple entities may have the obligation to provide auxiliary aids and services. When the law does not specify which entity has the sole obligation to provide auxiliary aids and services, any covered entity may be held liable if they are not provided.

Please note that PVOs may have additional obligations under state and federal law not included in this letter.

A PVO may find a reputable agency that contracts to provide auxiliary aids and services by conducting a basic internet search for the particular aid or service needed and consulting with the deaf or hard of hearing consumer. For example, searching for American Sign Language interpreter Washington, DC” will bring up a list of interpreting agencies in Washington, DC.

Thank you for your attention to this important matter.

Sincerely,

The National Association of the Deaf
Law & Advocacy Center

Relevant Sections of Title III of the Americans with Disabilities Act

§ 12181. Definitions.

As used in this title:

(7) Public accommodation. The following private entities are considered public accommodations for purposes of this title [42 U.S.C. §§ 12181-12189], if the operations of such entities affect commerce-- . . .

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(G) a terminal, depot, or other station used for specified public transportation;

(I) a park, zoo, amusement park, or other place of recreation;

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

§ 12182. Prohibition of Discrimination by Public Accommodations.

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction.

(1) General prohibition.

(A) Activities.

(i) Denial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit. It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual,

licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals. For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings. Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods. An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association. It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions.

(A) Discrimination. For purposes of subsection (a), discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

§ 12184. Prohibition of Discrimination in Specified Public Transportation Services Provided by Private Entities.

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

**Relevant Sections of the Implementing Regulations
of the Americans with Disabilities Act**

28 C.F.R. § 36.301. Eligibility Criteria.

(b) Safety. A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) Charges. A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

28 C.F.R. § 36.303. Auxiliary Aids and Services.

(b) Examples. The term "auxiliary aids and services" includes—

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(c) Effective communication.

(1) A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities.

(i) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate.

(ii) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(2) A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.

(3) A public accommodation shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except--

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(4) A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) Telecommunications.

(3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

(4) A public accommodation shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.

(f) Video remote interpreting (VRI) services. A public accommodation that chooses to provide qualified interpreters via VRI service shall ensure that it provides--

(1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;

(3) A clear, audible transmission of voices; and

(4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

28 C.F.R. § 36.104. Definitions.

Qualified interpreter means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 36.303(f).

Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include--

- (1) The nature and cost of the action needed under this part;
- (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- (4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Relevant Sections of the Department of Transportation Regulations

49 C.F.R. § 39.21. What is the General Nondiscrimination Requirement of this Part.

(a) As a PVO, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

- (1) You must not discriminate against any qualified individual with a disability, by reason of such disability, with respect to the individual's use of a vessel;
- (2) You must not require a qualified individual with a disability to accept special services that the individual does not request;
- (3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any vessel transportation or related services that are available to other persons, except when specifically permitted by another section of this Part; and
- (4) You must not take any action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the ADA.

(b)

(1) As a PVO that is a private entity, you must make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless you can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

(2) As a PVO that is a public entity, you must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless you can demonstrate that making the modifications would fundamentally alter the nature of the services, programs, or activities you offer.

49 C.F.R. § 39.3. What do the Terms in this Rule Mean.

"Auxiliary aids and services" includes:

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

49 C.F.R. 39.5. To Whom do the Provisions of this Part Apply?

(a) Except as provided in paragraph (b) or (c) of this section, this Part applies to you if you are the owner or operator of any passenger vessel, and you are:

(1) A public entity that provides designated public transportation; or

(2) A private entity primarily engaged in the business of transporting people whose operations affect commerce and that provides specified public transportation;

(b) If you are the PVO of a foreign-flag passenger vessel, this Part applies to you only if your vessel picks up passengers at a port in the United States, its territories, possessions, or commonwealths.

49 C.F.R. 39.51. What is the General Requirement of PVOs' Provision of Auxiliary Aids and Services to Passengers?

(a) If you are a PVO that is a public entity, you must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity. In determining what type of auxiliary aid or service is necessary, you must give primary consideration to the requests of individuals with disabilities.

(b) If you are a PVO that is a private entity, you must furnish appropriate auxiliary aids or services where necessary to ensure effective communication with individuals with disabilities.

(c) If a provision of a particular auxiliary aid or service would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, you shall provide an alternative auxiliary aid or service, if one exists, that would not result in a fundamental alteration or undue burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations you offer.

(d) As a PVO, it is your responsibility, not that of a passenger with a disability, to provide needed auxiliary aids and services.