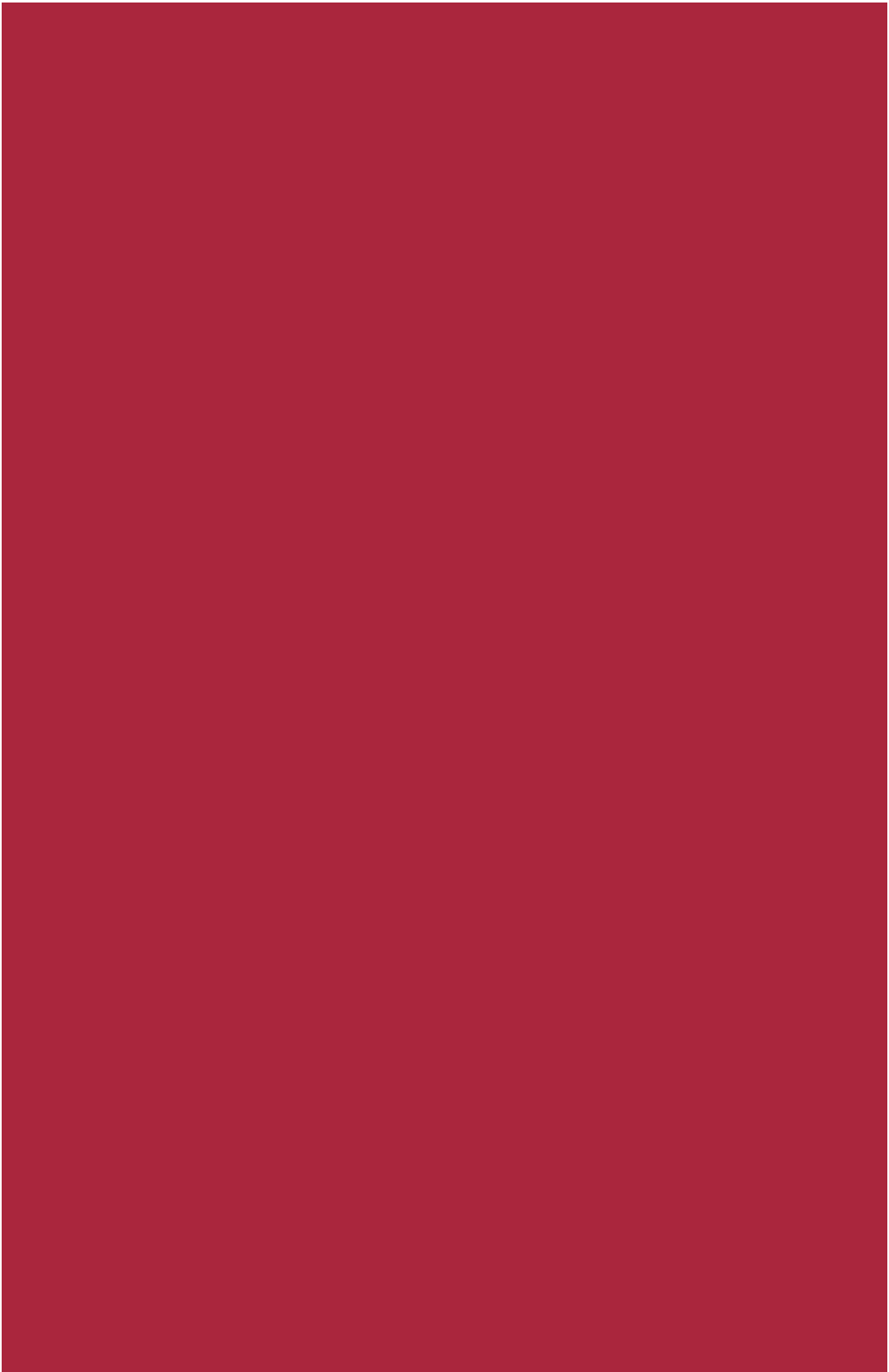


*Your rights and responsibilities under Title II  
of the Americans with Disabilities Act*



ACCESS STATE & LOCAL  
GOVERNMENT

A Publication of  
Eastern Paralyzed Veterans Association



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## Introduction

—There is probably no more compelling image of America than a local town hall in the center of a village green. Participatory government is at the foundation of the social and political structure of the United States, but many Americans with disabilities are denied the opportunity to share in their state and local governments. Discriminatory hiring practices and inaccessible public buildings prevent persons with disabilities from participating in their government.

—On July 26, 1990, President Bush signed the Americans with Disabilities Act (ADA), a civil rights law prohibiting discrimination against persons with disabilities. Now, like women and minorities, approximately 43 million Americans with disabilities are accorded equality under the law. Unlike previous civil rights legislation, the ADA includes specific guidelines, known as accessibility standards, to ensure that people with disabilities have equal access to employment, government services, public accommodations, and telecommunication systems. This brochure will concentrate on Title II of the ADA, which prohibits discrimination in state and local government (and agencies or instrumentalities thereof).

—For people with disabilities, the promise of nondiscrimination means more than fair hiring practices and unrestricted program participation. It is the provision of programs and services that are usable to everyone. Nondiscrimination means running government meetings, police and fire departments, and public buildings in a manner that allows people with disabilities to be full participants in these programs and services. In many cases, compliance can be as simple as moving a town meeting to a room on the first floor of the regular meeting house.

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—This brochure will outline what the ADA means to local government officials and people with disabilities. It will provide an overview of the law and a description of the requirements that must be met to fully comply with Title II of the ADA.

—Making local government barrier-free does not necessarily require a significant expense or a disruption in services, but it will always fulfill the promise of equality of opportunity for all citizens of the United States.

## *State & Local* Government & the ADA

—The ADA provides comprehensive civil rights protection for people with disabilities. Title II of the Act covers public entities—state and local government—and any of their “departments, agencies, or other instrumentalities.” All activities, services, and programs of state and local government are covered, including: state legislatures and courts, town meetings, police and fire departments, school districts, motor vehicle licensing, polling places, and employment.

—Unlike Section 504 of the Rehabilitation Act of 1973, which only covers programs receiving federal financial assistance, Title II extends to all the activities of state and local government, whether or not they receive federal funds.

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## Title II Requirements for State & Local Government

- A public entity may not refuse to allow a person with a disability to participate in a service, program, or activity and must maintain these (services, programs, or activities) in an integrated setting.

*Example:* A city may not refuse to allow a person with epilepsy to use parks and recreational facilities.

- A public entity must eliminate unnecessary eligibility standards or rules that deny people with disabilities an equal opportunity to enjoy their services, programs, or activities.

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*Example:* Public entities cannot create requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification.

- Public entities are required to make reasonable modifications in policies, practices, and procedures that deny equal access to people with disabilities.

*Example:* A manager of a city government building would be required to make an exception to a rule prohibiting animals in a public area in order to admit guide dogs and other service animals assisting individuals with disabilities.



- A public entity must furnish auxiliary aids and services when necessary to ensure effective communication, and may not place a special charge on the person with a disability to cover the costs of auxiliary aids and services or any modification designed to provide this type of accessibility.

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*Example:* An auxiliary aid or service includes assistive listening devices (ALDs) for persons with hearing impairments and audio recordings for individuals with visual disabilities.

- A public entity must provide direct access to telephone emergency services, including 911 services, to individuals with speech or hearing impairments.



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## Program Integration

—State and local government must ensure that people with disabilities are not excluded from services, programs, and activities because buildings are inaccessible. Title II requires a public entity to make its programs accessible in all except the most unusual cases.

—Congress mandates public entities to meet a significantly high threshold of accessibility. To better enable the full integration and participation of persons with disabilities in services, programs, or activities of state and local government, Title II's "undue burden" standard is much more strict than the "readily achievable" standard utilized in the Title III Public Accommodations section of the ADA. "Readily achievable" means easily accomplishable and able to be carried out with little difficulty or expense.

"Undue burden" places the onus on the public entity to demonstrate that any accessible modifications or accommodations would result in a fundamental alteration in the nature of a service, program, or activity or an excessive financial and administrative burden.

—State and local government may not provide services or benefits to people with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that benefits and services are equally effective. In this instance, the individual still has a right to choose to participate in the conventional program.



## Existing Facilities

—Consistent with regulations implementing Section 504 of the Rehabilitation Act of 1973, the ADA requires state and local government to provide “program accessibility” in existing facilities. “Program accessibility” means that the state or local government (and any agency or instrumentality thereof) shall operate each service, program or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. For example, if the courtroom where an individual with a mobility impairment must testify is located on the second floor of the courthouse, which is accessed only via a flight of stairs, the proceeding must be relocated to a first floor courtroom.

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—Public entities should have achieved program accessibility by January 26, 1992. If structural changes were needed to achieve program accessibility, a public entity with 50 or more employees needed to complete a transition plan by July 26, 1992, setting forth steps necessary to accomplish these changes. All necessary structural changes had to be completed by January 26, 1995.

—In addition to the transition plan, all state and local government should have completed self-evaluations by January 26, 1993. This review should have focused on the programs that were not previously subject to Section 504 requirements or were not included in original Section 504 self-evaluations. Public entities with 50 or more employees were required to keep their self-evaluations on file for three years.



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## New Construction/Alterations

—Title II requires that new construction and alteration of existing facilities started after January 26, 1992, be free of architectural and communication barriers. State and local government may choose between two design standards for new construction and alterations. They are the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG), which is the standard that must be used for public accommodations and commercial facilities under Title III of the ADA. If ADAAG is chosen, however, public entities are not entitled to the elevator exemption, which permits

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certain facilities that are less than three stories or that have less than 3,000 square feet per story to be constructed without an elevator. Once a public entity picks a standard for a project, it must apply that standard to the entire project. In other words, one floor of a building cannot comply with ADAAG if all the other floors comply with UFAS. *When the Department of Justice finalizes the revised Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, UFAS can no longer be used as a standard in newly constructed facilities.*

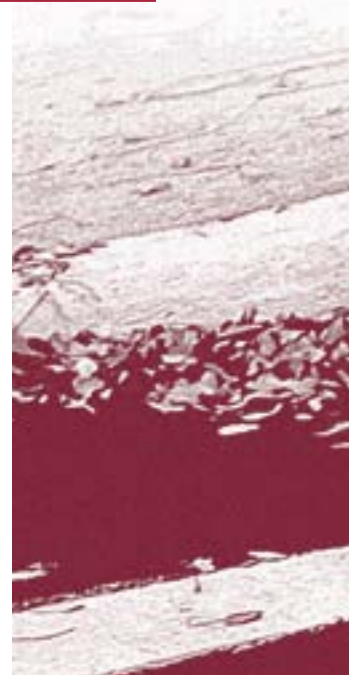
—Copies of the UFAS and ADAAG are available through the Eastern Paralyzed Veterans Association office closest to you. Also, these materials are available through the World Wide Web at **[www.usdoj.gov](http://www.usdoj.gov)**.

The Architectural & Transportation Barriers Compliance Board (the Access Board) developed accessibility guidelines specifically for public entities and can be found on its Web site, **[www.access-board.gov](http://www.access-board.gov)**. Until DOJ incorporates these guidelines into ADAAG, either UFAS or ADAAG are interim standards to be followed by local government.





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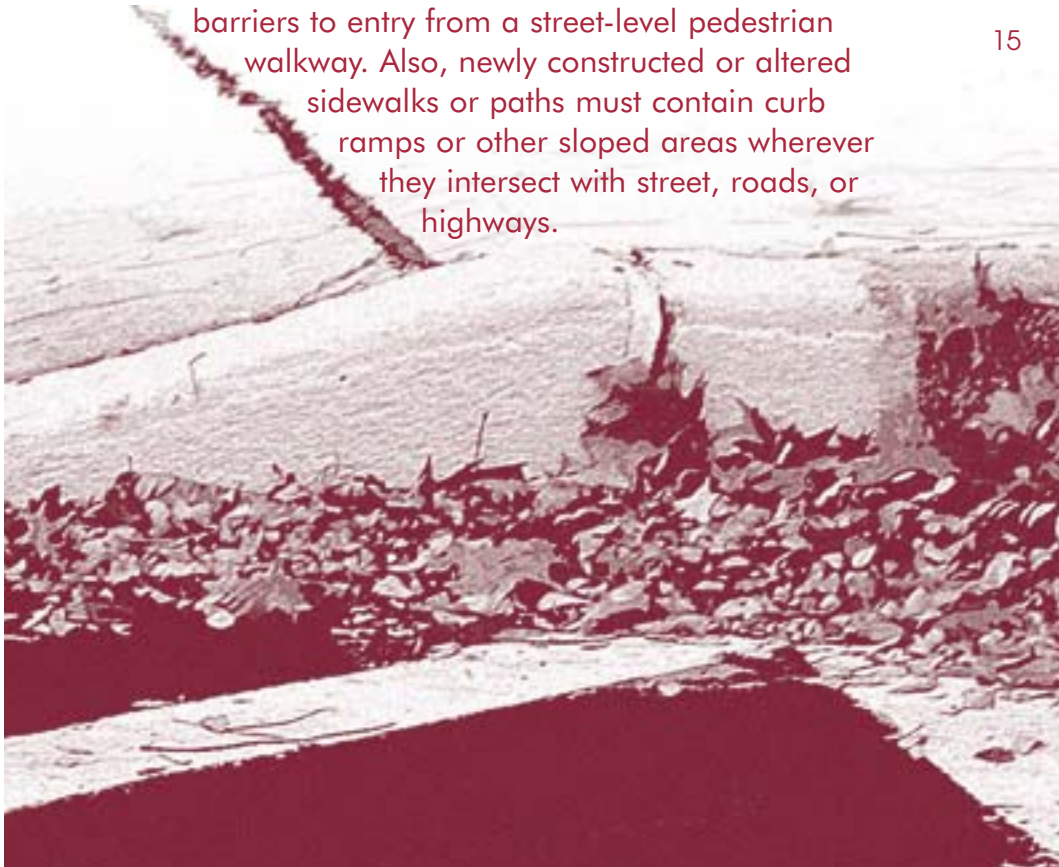


## Curb Ramps & Pedestrian Walkways

—Public entities that have responsibility or authority over street, roads, or walkways must include in their transition plan a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs. Priority must be given to walkways serving state and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

—Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway. Also, newly constructed or altered sidewalks or paths must contain curb ramps or other sloped areas wherever they intersect with street, roads, or highways.

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## Signage

—State and local government (and any agency or instrumentality thereof) shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol of accessibility must be used at each accessible entrance of a facility.

—ADAAG also specifies signage requirements for volume control phones, TDDs, ALDs, accessible toilet rooms, and other accessible facilities. Braille and raised letter signage may be necessary as well.

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## Grievance Procedures

—State and local governments with at least 50 employees must establish grievance procedures for handling ADA complaints and designate at least one person to coordinate compliance efforts. The “ADA coordinator” will be the contact person for people with questions about the entity’s compliance activities.

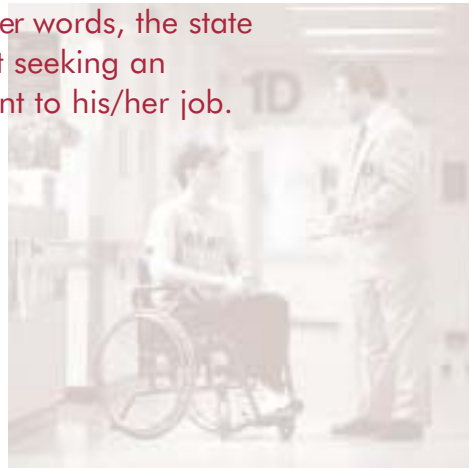


# Employment

—All public entities are covered, regardless of the number of employees, by the ADA employment provisions. Discrimination is prohibited in all employment practices and policies including the hiring process, wages, promotions, employee benefits, and employer-sponsored social activities. Reasonable accommodations to the known physical or mental limitations of otherwise qualified applicants or employees with disabilities are required, unless the public agency can show that the accommodation would impose an undue hardship on the operation of its program.

—While the employment provisions governing local government employers have not been limited, those applied to state government employers have been to some extent. Protections afforded state government employees were limited by a February 2001 Supreme Court decision (*Board of Trustees of the University of Alabama v. Garrett et al.*). Specifically, the ADA Title I provisions remain enforceable against state government employers by the federal government and by the aggrieved employee seeking injunctive relief, but not money damages. In other words, the state employee may pursue a lawsuit seeking an accommodation or reinstatement to his/her job.

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## Complaints

—If a person with a disability believes that he/she has been discriminated against by a state or local government agency or program, a written complaint can be filed within 180 days of the date of the alleged discrimination with the US Department of Justice by the individual who was discriminated against or by an authorized representative. To file a complaint, contact:

US Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Disability Rights Section-NYAV  
Washington, DC  
(800) 514-0301  
(800) 514-0383 (TDD)  
or visit **[www.usdoj.gov](http://www.usdoj.gov)**

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—A person with a disability may file a complaint in federal district court. The ADA does not require the complainant to exhaust administrative remedies prior to instituting litigation. Attorneys' fees are available to the prevailing party other than the United States government. Note, the United States Supreme Court has held that Congress exceeded its authority to abrogate immunity granted to the states by the Constitution. Thus, limiting the applicability of Title II to the states. Usually, the limitation applies to damage claims and not to the availability of injunctive relief. These decisions only affect the application of Title II to state government, not local government.

# Compliance Checklist

—As state and local governments have had to comply with Title II requirements since January 26, 1992, this checklist was developed to help evaluate current building conditions and any accessible alterations still necessary. Changes in programs or activities should also be considered to ensure equality. While this checklist is not inclusive of all accessibility requirements of the ADA, it may serve as a self-evaluation tool for a public entity. Those who feel that discrimination may exist, can also utilize this checklist, please remove the completed forms and forward them to:

Eastern Paralyzed Veterans Association  
75-20 Astoria Boulevard  
Jackson Heights, NY 11370-1177  
**Attention: Advocacy Program**

Your Name/Title: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Type of Building: \_\_\_\_\_

Address: \_\_\_\_\_

Town/City: \_\_\_\_\_

County/State: \_\_\_\_\_

ADA Coordinator  
name: (if any) \_\_\_\_\_

20 Please answer the following questions:

**Exterior**

Does the facility have reserved handicapped parking?

Yes \_\_\_ No \_\_\_ How many total spaces? \_\_\_\_\_

Are these accessible parking spaces as close as possible to the accessible entrance?

Yes \_\_\_ No \_\_\_

Are there barriers blocking the route to the entrance (i.e., curbs, medians, etc.)? If so, please indicate what the barrier is: \_\_\_\_\_  
\_\_\_\_\_

Is the building entrance ramped or level?

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Are the doors easy to open and wide enough (32" clear width) for a wheelchair user?

Yes  No

Is signage provided at all the inaccessible entrances directing persons with disabilities to the accessible entrance?

Yes  No

**Interior**

Once inside, are the hallways wide enough (36" clear width) to accommodate a wheelchair user?

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Yes  No

Can a person in a wheelchair access all services provided (i.e., court hearings, polling places, mayor's office) on an accessible level?

Yes  No

If not, what is the barrier preventing access?

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Is there an elevator or wheelchair lift available to allow a person in a wheelchair to get to the other floors in the building?

Yes \_\_\_\_\_ No \_\_\_\_\_

If not, what services or offices are on these floors?

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Are there any policies for providing these services to those individuals who cannot gain access to the upper level floors?

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#### **ABOUT EASTERN PARALYZED VETERANS ASSOCIATION**

Eastern Paralyzed Veterans Association is dedicated to enhancing the lives of people with spinal cord injuries or diseases and all people with disabilities by ensuring quality health care, promoting research, and advocating for civil rights and independence.

Eastern Paralyzed Veterans Association has enabled people with disabilities to lead full and productive lives. We participated in drafting parts of the Americans with Disabilities Act and the Fair Housing Amendments Act. Our staff also promotes compliance with these laws and educates the public about them. All of Eastern Paralyzed Veterans Association's services, from benefits counseling to wheelchair sports, are made possible through donations.

#### **HEADQUARTERS**

EASTERN PARALYZED VETERANS ASSOCIATION  
75-20 ASTORIA BOULEVARD  
JACKSON HEIGHTS, NY 11370-1177  
(718) 803-3782

**[WWW.UNITEDSPINAL.ORG](http://WWW.UNITEDSPINAL.ORG)**

#### **REGIONAL OFFICES**

EASTERN PARALYZED VETERANS ASSOCIATION  
111 WEST HURON STREET  
BUFFALO, NY 14202  
(716) 856-6582

EASTERN PARALYZED VETERANS ASSOCIATION  
P.O. BOX 42938  
PHILADELPHIA, PA 19101-2938  
(215) 381-3037

**Eastern Paralyzed Veterans Association**  
75-20 Astoria Boulevard, Jackson Heights, NY 11370-1177