



November 18, 2022

Ms. Taryn Williams, Assistant Secretary of Labor  
U.S. Access Board  
1331 F Street NW, Ste. 1000  
Washington, DC 20005-1111

**RE: Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act Accessibility Guidelines; Self-Service Transaction Machines and Self-Service Kiosks (ATBCB-2002-0004)**

Dear Ms. Williams,

Please accept the comments of the American Clinical Laboratory Association (ACLA) on the above-referenced advance notice of proposed rulemaking (ANPRM).<sup>1</sup> ACLA is the national trade association representing laboratories that deliver essential diagnostic health information to patients and providers. Several ACLA members have Patient Service Centers (PSCs) with self-service transaction machines (SSTMs) and/or kiosks, which allow customers to check in for appointments and confirm certain demographic and insurance information prior to specimen collection.

In summary, ACLA members currently make their machine and kiosk options accessible to customers with disabilities in a variety of ways and will continue to do so. We believe it is important for the Board to consider the many differences in functionality and context of SSTMs and kiosks before employing a “one size fits all” approach for all of them, and it should preserve existing flexibilities for businesses to use approaches that best meet the needs of their customers with disabilities, their locations, and the nature of the services the businesses offer. Technical standards that are overly prescriptive and inflexible may result in businesses withdrawing technology from their locations altogether, which would harm the broader consumer base. Adhering to the flexible approach codified in the Department of Justice’s “effective communication” regulation at 28 C.F.R. § 36.303(c) would mitigate this risk.

***Question 1: In this rulemaking, the Board intends to cover fixed or built-in electronic devices that are designed for unattended operation by customers (i.e., “self-service”) to conduct a transaction. It also intends to address fixed or built-in self-service kiosks, including those used to check-in, place an order, obtain a product, or retrieve information. Are there capabilities, functions, or other objective criteria that should define the types of devices covered as SSTMs or self-service kiosks?***

First, the Board must define “designed for unattended operation by customers” and “self-service.” We agree with the Board’s approach – that the scope of a rulemaking should not extend to devices designed for attended operation – but it is not clear when a device would be considered “designed for unattended operation”. It may be that a device has been designed for unattended

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<sup>1</sup> 87 Fed. Reg. 57662 (Sept. 21, 2022).

operation, yet in fact it is used in a location where assistance is always available from a nearby employee if a customer needs it. ACLA members regularly have both “self-service” and attended options for functions such as check-in at a PSC, because many customers choose not to use a kiosk even when it is available, and even when they are physically able to use one.

We believe that the scope of a rulemaking should be determined not based on whether a device is for “attended” or “unattended” operation, but based on whether a means of effective communication is available for the purpose. Fundamental to the concept of the availability of auxiliary aids and service in public accommodations is flexibility in the means of “effective communication,” taking into account factors that include the nature of the communication and the context in which it is taking place.<sup>2</sup> The ultimate responsibility rests with the public accommodation to choose a method that results in “effective communication”.<sup>3</sup> We would not support ATM-style technical standards requirements for SSTMs and kiosks in locations and contexts where means of “effective communication” already are provided.

The Board also must be cognizant of, and account for, the type of information shared on an SSTM or a kiosk and the setting of the electronic device. As the regulation suggests, where a patient’s interaction with an SSTM or a kiosk is brief and uncomplicated, lesser investment in the methods of communication is warranted.<sup>4</sup>

***Question 3. Are there types of self-service electronic devices that should not be covered by this rulemaking? If so, why not?***

The Board should exclude from a rulemaking those electronic devices that are not used to obtain services themselves or to complete a transaction, and where a customer must interact with another individual to obtain services or complete a transaction. An ATM is used to complete an entire transaction with a bank: the transaction is depositing money, taking money out, checking a balance, or transferring money between accounts. A check-out terminal is used to complete an entire transaction in a grocery store: the transaction is purchasing food and other items. In each case, a customer does not interact with another individual to obtain services or complete a transaction, and the transaction is intended to be completed on the device without assistance from the business’ employees. In contrast, a check-in kiosk at a PSC is not used to obtain services from a laboratory, the “services” being specimen collection, and a customer must interact with a service provider during the transaction. In this interaction, the service provider can communicate with the customer, assist the customer with check-in, if necessary, and obtain information from the customer after the check-in step.

The Board also should exclude from any rulemaking those electronic devices located in businesses that provide readily-accessible alternative means to achieve the same objective as the electronic device. For example, ACLA members offer check-in through PSC employees for consumers who choose not to check in through an electronic device. Also, ACLA members offer

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<sup>2</sup> See 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(c)(1)(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.”).

<sup>3</sup> 28 C.F.R. § 36.303(c)(1)(ii).

<sup>4</sup> *Id.*

mobile applications that a consumer can use on a personal device with the consumer's choice of technology (e.g., screen-reading software on a "smart" phone) instead of using a self-service kiosk to check in. The barriers to accessing this type of alternative means are low, as they are free and easy to download.

We also believe that the scope of any rulemaking should not include electronic devices that employ an effective alternative means of communication between a customer and a business, including but not limited to any alternative means that meets the "equivalent facilitation" standard.<sup>5</sup> This would include, for example, a check-in kiosk used by visually-impaired customers that is programmed to recognize a common gesture applied to the screen in any direction, inform the customer via audio that check-in has been completed, and assign a number to identify the customer by a number that will be called when it is the customer's turn for service. The device also alerts a member of the business' staff that a customer with a visual impairment has checked in.

***Question 4. Should the Board's rule require all fixed or built-in SSTMs and self-service kiosks in each location to be accessible? If not, why, and what should the number be? Are there some facilities or locations that should have a higher number of accessible devices than others?***

The Board's rulemaking should not require all fixed or built-in SSTMs and kiosks in a location to be accessible, particularly when a business has made available a readily-accessible alternative means to achieve the same objective as the SSTM or kiosk. Some locations, including many PSCs, have limited square footage, and many have just one kiosk. It would be cost-prohibitive, and in some cases impossible, to retrofit space to accommodate accessible SSTMs and kiosks that are used by only some customers with visual, hearing, or physical impairments (many of whom would check in through PSC staff or use a mobile application instead). It also could have a negative impact on the broader consumer base, which could become confused by a device with additional peripheral equipment with which the general public is not familiar. While still not accepted or used by large segments of the general public, tablets at least are familiar to the public and therefore more approachable. If each device must be equipped with peripheral equipment, it could make the existing SSTMs less approachable and usable for the vast majority of PSC visitors who do not need such peripheral equipment.

***Question 5. The Board seeks comment on this planned approach for the proposed supplementary guidelines for SSTMs and self-service kiosks outlined in this ANPRM.***

The Board must consider the great variety of communications for which SSTMs and kiosks are used, and the many different contexts in which they are used, before it proposes to apply the technical requirements for ATMs and fare machines to all of them. The ATM and fare machine requirements at 36 C.F.R. Part 1191 are appropriate for communications that can be accommodated using a numeric keypad. They are not appropriate for communications in other contexts, even when those communications are relatively limited and basic. For example, communications that require spelling a name to identify a customer, healthcare provider, or insurance company are not easily accommodated using a numeric keypad, and providing audio

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<sup>5</sup> ADA Standard 103.

access to the entire alphabet one letter at a time would be impractical and painstakingly slow.

Adding equipment to a kiosk, such as keyboards and headphones, presents other challenges, including added expense, equipment abuse, deterioration, and equipment sanitation. It is possible in some cases to provide audio with use of a headphone jack, but manufacturers are eliminating them on many electronic devices used for self-service, and wired headphones are becoming obsolete quickly. This underscores another challenge of providing additional equipment to self-service kiosks: technology changes rapidly, and what may be available to a business today to meet technical requirements may not be available tomorrow, adding to the expense borne by a business.

***Question 8. The Board seeks comments on the numbers of small entities that may be affected by this rulemaking and the potential economic impact to these entities; these include small businesses, small non-profits and governmental entities with a population of fewer than 50,000. The Board also seeks feedback on any regulatory alternatives that may minimize significant economic impacts on small entities.***

Most ACLA members are not “small entities,” but the PSCs where they interact with customers are like small businesses, with limited numbers of customers per day and even more limited demand for accessible SSTMs or kiosks. The economic impact of requiring accessible electronic devices in each of these individual locations far exceeds the demand, especially when alternative means of communication are easily available.

Thank you for your attention to our ideas and our comments on the ANPRM. Please do not hesitate to contact me at [aborden@acla.com](mailto:aborden@acla.com) with any questions.

Sincerely,



Adam Borden  
Senior Vice President, Policy & Strategy  
American Clinical Laboratory Association