

November 21, 2022

Office of Technical and Information Services
U.S. Access Board
1331 F Street N.W., Suite 1000
Washington, DC 20004-1111

To Whom It May Concern:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Architectural and Transportation Barriers Compliance Board's (Access Board) Advance Notice of Proposed Rulemaking (ANPR) to begin the process of adding self-service transaction machines (SSTMs), including electronic self-service kiosks, to its accessibility guidelines.² Kiosks and other types of SSTMs allow users to conduct an expanding range of transactions and functions and are now a common feature in places of public accommodation, government offices, and other facilities. Banks, for example, are deploying electronic self-service kiosks to improve customer service and provide more personalized financial services than traditional automated teller machines (ATMs).

ABA and its members support the Access Board's goal to improve the accessibility of SSTMs and self-service kiosks given their increasing ubiquity and utility. In promulgating the rule, we urge the Access Board to balance this important goal with practical considerations and technological limitations. Specifically, and in response to the Access Board's questions, ABA offers the following recommendations:

1. As ATMs are already subject to a separate accessibility standard, ATMs should be excluded from the definition of SSTMs and this rulemaking. In addition, devices that allow customers to engage directly with an institution's personnel should be excluded since they are not purely self-service devices. Due to their simplicity and privacy concerns, point-of-sale terminals should also be excluded.
2. As is the current rule for ATMs and fare machines, the rule should only require that one SSTM or self-service kiosk machine at each location be accessible.
3. As it supplements its current technical requirements for SSTMs and self-service kiosks, the Access Board should permit functionally equivalent alternatives and apply any new requirements only to machines constructed after the rule's mandatory effective date.

¹ The American Bankers Association is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.6 trillion in deposits and extend \$11.8 trillion in loans.

² 87 Fed. Reg. 57662 (proposed Sept. 21, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-09-21/pdf/2022-20470.pdf>.

4. The Access Board should consider the potential impact of the rulemaking on community banks.
5. The ATM and fare machine accessibility standards should not be updated as part of this rulemaking. ATMs and SSTMs are very different devices and requiring institutions to implement two new and different standards during the same time period could be cost-prohibitive, unnecessarily burdensome, and confusing.

A. Existing Accessibility Guidelines

Under the Americans with Disabilities Act (ADA), the Access Board is charged with developing and maintaining minimum technical accessibility requirements for the built environment in new construction, alterations, and additions, which become binding on buildings and facilities covered under Title II (state and local government) and Title III (places of public accommodations) once adopted by the Department of Justice (DOJ). The Access Board is now soliciting comment on its plan to supplement its accessibility guidelines for SSTMs and self-service kiosks based on three existing U.S. accessibility standards:

- 2004 ADA accessibility guidelines for ATMs and fare machines;³
- 2013 accessibility standards for self-service kiosks in airports;⁴ and
- 2017 Revised Section 508 accessibility standards for hardware.⁵

The ANPR includes a side-by-side matrix comparing the three existing accessibility standards. Below is a brief overview of the three standards.

1. Existing Accessibility Guidelines for ATMs and Fare Machines

The Access Board's ADA Accessibility Guidelines (ADAAG), which were updated in 2004 and include requirements for ATMs and fare machines, contain technical requirements on speech output, Braille instructions, privacy, input controls, display screens, operable parts, visibility, tactile symbols, clear floor space, and more. Under DOJ's revised "Standards for Accessible Design" adopted in 2010, ATMs existing in 2010 were exempt from the new height, reach, and other physical access requirements if they complied with the previous standard. However, ATMs existing in 2010 were required to comply with the communicative (i.e., speech output) requirements unless compliance imposed an undue burden. The rule also requires that banks have at each location at least one ATM that meets current accessibility standards.

2. Self-Service Kiosks in Airport Regulations

In 2013, the Department of Transportation (DOT) supplemented its regulations under the Air Carrier Access Act (ACAA) of 1986 and the Rehabilitation Act to address access to airport self-service kiosks used for checking in, printing boarding passes, and other passenger services. Similar to the planned approach for this rulemaking, the DOT applied requirements based on the existing accessibility requirements for ATMs and fare machines and the original Section 508 standards for self-contained closed products. The regulation also requires that new airport kiosks meet the DOT standards until at least a quarter of all kiosks at each airport location are accessible.

³ 69 Fed. Reg. 44084 (July 2004), <https://www.govinfo.gov/content/pkg/FR-2004-07-23/pdf/04-16025.pdf> (ADAAG).

⁴ 78 Fed. Reg. 67882 (Nov. 2013), <https://www.govinfo.gov/content/pkg/FR-2013-11-12/pdf/2013-26749.pdf>.

⁵ 82 Fed. Reg. 5790 (Jan. 2017), <https://www.govinfo.gov/content/pkg/FR-2017-01-18/pdf/2017-00395.pdf>.

3. Revised Section 508 Accessibility Standards for Hardware

The Access Board is responsible for issuing accessibility standards for “information and communication technology” developed, procured, maintained, or used by federal agencies, which, under Section 508 of the Rehabilitation Act, must be accessible. These standards are broken down by functional area, including functional performance criteria, hardware, software, support documentation, and services. The original Section 508 standards for hardware were similar to the current standards for ATMs and fare machines and addressed speech output, Braille instructions, privacy, input controls, display screens, operable parts, and privacy. However, the hardware section under the 2017 Revised Section 508 Standards contain additional provisions that address biometrics, use of color and non-speech audio to convey information, status indicators, captioning, volume control for private listening (e.g., through headphone jack) and non-private audio (i.e., speakers), alphabetic keys, timed responses, flashing elements, and display screens blanking when speech-output mode is activated. The Revised Section 508 Standards apply to all devices with closed functionality.⁶

B. Application of Rulemaking

In Questions 1-3 of the ANPR, the Access Board requests information on the criteria or types of devices that should be covered as SSTMs or self-service kiosks. Question 3 specifically requests comment on the types of devices that the rulemaking should not cover. ABA strongly recommends that the Access Board exclude from the definition of SSTMs automated teller machines (ATMs), devices that allow customers to directly interact with an institution’s personnel, and point-of-sale (POS) terminals.

1. As ATMs are already subject to a separate accessibility standard, this rulemaking should exclude ATMs.

In 2004, the Access Board adopted separate accessibility guidelines for ATMs when it issued accessibility guidelines for the built environment. It would be confusing and burdensome to require ATM users to comply with two separate accessibility standards.

Moreover, the Access Board has also recognized in its previous rulemakings the distinction between ATMs and SSTMs. In March 2010, following the finalization by the DOJ of its rulemaking on the accessibility standards for ATMs and fare machines, the Access Board issued an ANPR stating it was considering supplementing its ADAAG for SSTMs used for ticketing, check-in or check-out, seat selection, boarding passes, and ordering food in restaurants and cafeteria.⁷ It excluded ATMs, stating “ADAAG already addresses access to automated teller machines (ATMs) and to fare vending machines and provides scoping requirements (section 220) and technical specifications (section 707) for such devices.”⁸

Second, SSTMs and self-service kiosks are relatively new technological developments compared to ATMs, and typically include an interactive tablet or touchscreen computer terminal that allows people to access information or services without interfacing directly with an

⁶ Information and communication technology with closed functionality has limited functionality by design or choice, which limits or prevents a user from adding assistive technology.

⁷ Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Standards, 75 Fed. Reg. 13457 (proposed Mar. 22, 2010), <https://www.govinfo.gov/content/pkg/FR-2010-03-22/pdf/2010-6245.pdf>.

⁸ *Id.* at 13467.

organization's personnel, although personnel is available to assist if wanted or needed. The Access Board in the ANPR lists the following examples of SSTMs or self-service kiosks:

- SSTMs that serve as a point-of-sales machines for self-checkout in retail facilities, grocery stores, and drug stores;
- Self-service kiosks at airports and hotels that provide check-in services; and
- Restaurants that provide touchscreens for customers to place orders, and health care providers, including doctors' offices and hospitals, that allow patients to check-in at kiosks.⁹

In contrast, ATMs are not new, having first been deployed in 1969. Moreover, unlike many of the SSTMs and self-service kiosks mentioned above, some ATMs do not and cannot operate or function like personal computers. ATMs are structurally and environmentally different from personal computers and include additional security components. Unlike personal computers, ATMs contain cash dispensers, personal identification number (PIN) pads that collect identifiable financial information and need additional uninterruptible power supplies to protect from possible anomalies in its power supply. These components are not easily modified with adaptive technology.

Third, ATMs transactions involve multiple parties to complete a simple transaction. Each party in the chain—the ATM, the ATM network, the processor or host, and the customers' bank—must be able to “translate” and communicate the request and approval. Adding a new type of transaction or information for display means altering all parts of the system, a significant challenge and investment even where it might be feasible. Also, it is not commercially or technically feasible to update most, if not all, existing ATMs due to their age. What is feasible for one ATM model may not be feasible for others.

Finally, the significant costs of compliance will impact the availability of ATMs. ATMs remain a valuable tool for banks to provide cost-effective services, and customers continue to value the convenience of ATMs. One study found that access to a surcharge-free ATM network was the second most important item for consumers when considering a bank account (after mobile and online functions).¹⁰ Increasing the cost of updating and maintaining ATMs, however, alters the business case for deployment. If the cost of compliance is too significant, ATM owners may be forced to remove non-compliant ATMs, especially those with low use and those located in more remote areas where ATMs are the only cost-effective physical presence available—at a time when branch closings are on the rise.¹¹ If new rulemakings make deploying or maintaining ATMs in these areas cost-prohibitive, the residents in these communities may have no physical access to financial services.

For these reasons, ABA recommends that ATMs be excluded from the definition of SSTMs in this rulemaking.

⁹ 87 Fed. Reg. at 57662.

¹⁰ PaymentsJournal, *ATMs: From Cash Dispenser to True Automated Teller* (May 23, 2019), <https://www.paymentsjournal.com/atms-from-cash-dispenser-to-true-automated-teller/>.

¹¹ S&P Global Market Intelligence, *US bank branch closures increase 38% to new record high in 2021* (Jan. 20, 2022), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-bank-branch-closures-increase-38-to-new-record-high-in-2021-68483121>.

2. The rulemaking should exclude devices that allow customers to engage directly with an institution's personnel.

Devices that allow customers to engage directly with an institution's personnel are not purely self-service devices and should be excluded from the definition of SSTMs in this rulemaking. For example, interactive teller machines (ITMs), a type of ATM, allow users to engage directly with a bank teller through audio and a screen on the machine. In essence, the ITM-engaged bank teller functions similarly to a bank teller located inside a physical branch who can perform various services for the customer. For some ITMs, the teller can remotely access the machine and complete the transaction for the customer. Tablets used during an engagement with a bank employee are another example. Rather than use paper forms and documents, some banks provide an electronic tablet for the customer to complete forms, guided by the bank employee.

The additional human interaction functionality means that these machines and devices are not purely self-service. Accordingly, they should be excluded from the definition of SSTMs for this rulemaking.

3. The rulemaking should exclude point-of-sale terminals.

Like ATMs, point-of-sale terminals are not new, having been deployed since the 1970s, and involve communication among multiple parties to complete a transaction. Indeed, these simple devices are even less sophisticated than ATMs. It would not be commercially or technically feasible to redesign them to add specifications designed for newly developed self-service technical devices.

In addition, including POS terminals in this rulemaking, could create privacy concerns for users. For example, requiring audio output on these machines could mean customers' PINs or the amount of cash back requested are read aloud. Also, a customers' PINs could be more easily read if the new standards require larger text on POS terminals. Lastly, because these devices are typically deployed in stores, restaurants, and similarly staffed businesses, customer service staff are generally available if assistance is needed.

For these reasons, ABA recommends that the definition of SSTMs also exclude point-of-sale (POS) terminals for this rulemaking.

C. Minimum Number Requirement

Question Number 4 asks for comment on the number of SSTMs or self-service kiosks that should be accessible in each location. ABA recommends that the Access Board adopt the current ADAAG requirement applied to ATMs and fare machines, which requires that one machine at each location be accessible.

Any accessible machine requires sufficient spacing to accommodate individuals who use mobility devices. Current ADAAG requires the clear floor or ground space to be 30 inches minimum by 48 inches minimum.¹² The amount of space required for each machine would limit the number of machines that could be deployed in a particular location—or even require current machines be removed, for example, in locations with a sloped floor or in historical buildings.

¹² ADAAG, Section 302.

In addition, requiring additional machines at a location to be accessible could be cost-prohibitive. As with ATMs, the cost of installing and maintaining multiple accessible SSTMs will mean fewer SSTMs available to consumers, especially in remote or less used locations.

D. Key Concepts the Access Board Should Consider During Rulemaking

Question 5 of the ANPR requests comment on the Access Board's planned approach for adding SSTMs and self-service kiosks machines accessibility standards to its guidelines, which includes adopting the technical requirements from the three existing accessibility standards mentioned above. ABA offers the following key concepts the Access Board should consider.

1. The rulemaking should permit functionally equivalent alternatives.

To allow for more flexibility for future innovation of SSTMs and self-service kiosk machines, which are relatively new technological devices, the Access Board should permit use of features that provide the functional equivalent of the specified requirements. Technological advances will allow superior, more efficient, and less expensive ways for SSTMs and self-service kiosks machines to be accessible to people with disabilities. The Access Board should not discourage their development or adoption.

The Access Board should also consider alternatives due to possible space limitations to compliance. Without knowing the new perimeters, physical barriers may make it impossible or unduly burdensome to comply with the new requirements.

2. The rulemaking should only apply to machines constructed after the mandatory effective date of the new rules.

ABA encourages the Access Board to limit application for any new requirements to SSTMs or self-service kiosks machines constructed after the mandatory effective date of the new rules. The Access Board adopted a similar scope in its 2004 ADAAG rulemaking, stating that "the requirements are to be applied during the *design, construction, additions to, and alterations of sites, facilities, buildings, and elements...*"¹³ (emphasis added). The Access Board's current rulemaking should adopt the same scope. It is widely understood that it is easier to make new machines accessible during the design and construction stages rather than to later retrofit them.¹⁴

In addition, the Access Board should recognize important policy implications of applying a new standard retroactively. First, applying a new standard retroactively inhibits changes to the standard and potentially improved accessibility. Second, it is patently unfair. An institution that in good faith designs a machine to comply with the existing standard should not have to retrofit each time the standard changes, potentially at great cost. Applying the new standard retroactively discourages taking measures to make machines accessible in the first place.

E. Updates to ATM and Fare Machines Accessibility Standards

Question 6 request comments on whether the requirements for ATMs and fare machines in the current ADA guidelines should be updated as part of this rulemaking to address additional features covered in the Revised 508 standards and the DOT rule pertinent to the accessibility of ATMs and fare machines. For the reasons stated in Part B(1), ABA strongly recommends that

¹³ ADAAG, Section 101.1

¹⁴ See 73 Fed. Reg. 34508, 43542 (June 17, 2008) ("accessibility can be accomplished easily in the design and construction stage").

the Access Board not amend the ATM and fare machine accessibility standards in this rulemaking on SSTMs and self-service kiosks. In addition, it could be cost-prohibitive and overwhelming for owners of ATMs and SSTMs to have to understand, analyze, design, and implement different technical requirements for different machines within the same time period.

F. Rulemaking Economic Potential Impact on Small Entities

Question 8 of the ANPR requests comments on the number of small entities that may be affected by this rulemaking and the potential economic impact to these entities. The Access Board also seeks feedback on any regulatory alternatives that may minimize significant economic impacts on small entities.

Any rulemaking on SSTMs and self-service kiosk machines will affect community banks¹⁵ who have a special interest in deploying SSTMs and self-service kiosk machines. As noted, in recent years, branch closings, including those of community banks, have increased as customers have moved to digital banking.¹⁶ The impact has been more acute in remote and rural areas. SSTMs that can function as a virtual branch offer community banks a cost-effective alternative to maintaining a physical branch. In proceeding with rulemaking, the Access Board should consider the impact of new standards on the costs of SSTMs and their availability as a cost-effective option for community banks in serving their customers.

The recommendations described in Part D of this letter will help reduce the regulatory burden on community banks (i.e., requiring only one accessible SSTM and self-service kiosk machine at each location, allowing functionally equivalent alternatives, and applying technical requirements only to machines constructed after the rule's effective date). The last recommendation, in particular, is important for community banks because, as with ATMs, their only economically feasible option is often to deploy "used" or older machines.

G. Conclusion

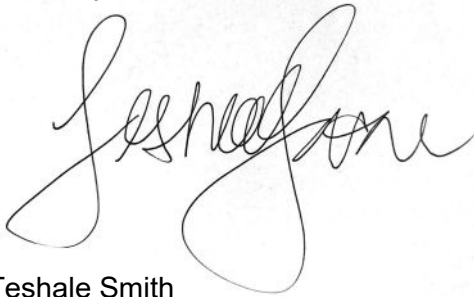
ABA appreciates the opportunity to comment on the Access Board's plan to add SSTMs and self-service kiosk machines accessibility standards to its existing guidelines. We support the Access Board's rulemaking efforts to improve the accessibility of SSTMs and self-service kiosks machines as they become more common. We recommend the standards permit functionally equivalent alternatives and apply any new requirements only to machines constructed after the mandatory effective date of the rule. It is also critical that the Access Board consider the potential impact on community banks and other small entities. In addition, the new rulemaking should focus on newly developed SSTMs and self-service kiosks machines and exclude ATMs, devices that allow for direct interaction with an institution's personnel, and point-of-sale terminals and not amend the ATM and fare machines accessibility standards in this rulemaking.

¹⁵ According to the Federal Deposit Insurance Corporation (FDIC), the number of banks that meet their definition of community banks is 4,333 out of 4,771 banks, which accounts for about 91% of banks. See Fed. Deposit Ins. Corp., Community Bank Research Program, Reference Data (last updated Aug. 30, 2022), <https://www.fdic.gov/resources/community-banking/cbi-data.html>.

¹⁶ S&P Global Market Intelligence, *supra* note 8.

Please feel free to contact me if you have any questions or would like to discuss any of the points above.

Sincerely,

A handwritten signature in black ink, appearing to read "Teshale Smith". The signature is fluid and cursive, with a large loop at the end of the last name.

Teshale Smith
Counsel
Consumer Regulations and Compliance Solutions