

**IMPLEMENTATION**

**III. ADA Program: Minimum Requirements**

Notice of Nondiscrimination Requirements

Both the Title II ADA and Section 504 regulations provide requirements for STAs to inform the general public of its obligation to comply with these regulations. (28 CFR § 35.106 and 49 CFR § 27.15). These regulations require that recipients notify STA program participants and applicants that they do not discriminate on the basis of disability in the admission to, or provision of its programs, services and activities. Many entities who must comply with these requirements in sectors outside of transportation have developed "Notices of Nondiscrimination" that incorporate all the notice requirements of ADA and Section 504. The Notice of Nondiscrimination is not to be confused with the "assurances" statements that are provided by STAs as stated above or in Title VI plans, bid notices and in Federal-aid construction contracts via FHWA Form-1273 "Required Contract Provisions Federal-aid Construction Contracts." The assurances and statements provided in these documents are methods that the STAs must use to confirm to FHWA that by receiving Federal aid, they will not discriminate under the applicable civil rights laws and regulations and failure either to include these statements or abide by their intent would result in non-compliance, or result in a breach of contract. The Notice of Nondiscrimination is a required method of informing the general public that the STA will not discriminate on the basis of disability with respect to its programs, services and activities. The Notice of Nondiscrimination also has broader dissemination than the assurances or nondiscrimination statements required under other FHWA civil rights regulations.

Notice Requirements	Title II ADA	Section 504
A statement that STA prohibits discrimination on the basis of disability in the provision of or admission to its programs, services and activities (statement of nondiscrimination)	<b>Yes</b> (However, the ADA requirements are less specific with respect to specific language; the ADA preamble provides more guidance).	<b>Yes</b>
Designate an employee responsible for compliance with the regulation (coordinator)	<b>Yes</b>	<b>Yes</b>
Inform the public of the name, title, office address, and phone number of the coordinator	<b>Yes</b> (but not required to be included in a statement of nondiscrimination)	<b>No</b> (Section 504 only requires that the notice contain the identity of the individual designated as the Section 504 Coordinator)
Statement of nondiscrimination is included in recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees.	<b>No</b> (However, the preamble suggests that the public entity use these methods of dissemination)	<b>Yes</b>

While both Title II ADA and Section 504 have notice requirements, they are similar, but not identical in nature. There are minor differences between the regulations relating to the required content of recipient notices of non-discrimination and how the notice is disseminated. Despite these differences, we recommend that recipients and public entities develop a universal Notice of Nondiscrimination based on the model statement provided in Appendix 4—D to ensure compliance with the regulations and also to provide easier access to information for program participants. The table on 3—13 delineates the notice requires of the Title II ADA and Section 504 regulations.

As indicated above, the Title II regulation requires that a public entity generally make information regarding the provisions of Title II available to applicants, participants and other interested persons (28 CFR §35.106). The Title II regulation also requires public entities to advise the public of the name, work address and work telephone number of the individual designated as the ADA Coordinator. However, the Title II regulation does not specify the methods to be used by recipients in publishing notices of nondiscrimination (The Title II ADA preamble suggests that the public entity use these methods of dissemination). The USDOT Section 504 regulations contain more detailed requirements that specify the information that must be included in a notice of nondiscrimination. These regulations specify program participants and beneficiaries to include "those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient." The Section 504 regulation requires that a recipient of Federal Financial Assistance from FHWA must implement appropriate, continuing steps to notify STA program and service participants and beneficiaries that the recipient does not discriminate on the basis of disability in violation of the statute and regulation. The employee designated to coordinate compliance with Section 504 regulations must be identified in the notification.

The Notice of Nondiscrimination notice should contain two basic elements: (1) a statement of nondiscrimination that specifies the basis for non-discrimination with respect to ADA and Section 504; and (2) identification by name or title, address, and telephone number of the employee or employees responsible for coordinating the compliance efforts for both regulations. The regulations do not require that a recipient identify the pertinent regulations by title. Since STAs also have a responsibility to comply with Title I (Employment), it is prudent to reference "ADA" instead of a specific Title of the ADA in the Notice of Nondiscrimination. The Section 504 regulation does not require a recipient to include the address or telephone number of the responsible employee assigned to coordinate its compliance efforts. However, identifying the responsible employee without information on how to contact that person does not constitute an effective notice. An acceptable nondiscrimination notice should provide information on how to contact the responsible employee. While not specifically required by the ADA or Section 504 regulation, it would be beneficial to provide the ADA/504 Coordinator's e-mail address in the Notice of Nondiscrimination to facilitate communication between STA program participants and the ADA/504 Coordinator (the regulations were promulgated prior to the widespread use of e-mail).

Compliance with the notification requirements of Section 504 will also generally satisfy the notification requirements of Title II for State and local governments.

If the person leaves the ADA/504 Coordinator position or if the STA decides to assign that responsibility to another individual, the STA at a minimum must update and revise the Notice of Nondiscrimination when it updates the publications that include the Notice of Nondiscrimination. The STA can insert the Notice of Nondiscrimination in current publications that are not being updated or reprinted via decal or other method. Actual methods of notification are detailed below.

#### Methods of Notification of Nondiscrimination Requirements

In accordance with Section 504 regulations 49 CFR § 27.15(a), the STA may opt to post the Notice of Nondiscrimination in local newspapers and magazines in the State MPO area or locality it serves. However, the Section 504 regulation at 49 CFR § 27.15(b) states that STAs must include the Notice of Nondiscrimination in any bulletins, announcements, handbooks, pamphlets, brochures, recruitment materials application forms, or any other publication that are made available to its program participants, applicants, or employees. As noted above and in the Section 504 regulation STAs may meet this requirement either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. According to

*The Title II Action Guide* (Adaptive Environments, Inc.) and the *Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools* (United States Department of Education – Office for Civil Rights). The following is a list of methods of providing this notice:

- *The public at large*: newspaper legal notice, flyers posted at all facilities, radio and/or captioned television announcements, and accessible websites. The U.S. Department of Justice provides Website Accessibility Guidelines, and resources for website accessibility at: <http://www.usdoj.gov/crt/ada/websites2.htm>. Those guidelines are discussed in the Auxiliary Aids section of the Desk Reference.
- *Prospective Employees*: insert in job applications, newspaper ads, posted advertisements, posted vacancy notices.
- *Current Employees*: accessible intranet sites, new employee orientation documents, regular mailings to employees, posting at work sites, postings in lounges, faculty rooms, and dining areas, personnel manual, and training documents.
- *Contractors and Vendors*: Nondiscrimination notifications should be included in all contracts, purchase order forms, and agreements.

With respect to STAs the notice should appear in addition to the above, in publications such as STA-issued road maps, environmental assessments, environmental impact statements, affirmative action plans, brochures that explain program services and benefits such as public involvement, right-of-way, planning and construction. The notice should be displayed prominently in public areas such as the lobbies of STA buildings, at highway rest areas, at public meetings or public information centers set up for public involvement activities connected to highway projects (the Notice of Nondiscrimination can be announced by the hearing officer). The notice should also be posted on the STAs website. While not specifically required by the ADA or Section 504 regulation, it would be beneficial to embed the ADA/504 Coordinator's e-mail address in the Notice of Nondiscrimination to facilitate communication between STA program participants and the ADA/504 Coordinator.

#### Self-Evaluation

The Title II ADA regulation at 28 CFR § 35.105 and Section 504 regulation at 49 CFR § 27.11(c)(2)(i)(ii) provide that all recipients and public entities, regardless of size, must conduct a self-evaluation. The self-evaluation is a comprehensive review of the public entity's current policies, services, communications and practices, as well as analyzing how they affect persons with disabilities. Through the self-evaluation, the public entity must: 1) identify any policies or practices that do not comply with the regulations and 2) modify policies and practices to bring them into compliance. The Title II ADA regulation at 28 CFR § 35.105 provides that a public entity must evaluate its current services, policies, and practices, and the effects of implementation that do not or may not meet the requirements of the ADA and, to the extent modifications of any such services, policies, and practices, are required, the public entity shall proceed to make the necessary modifications. The scope of the review includes not only formal written policies and procedures but also actual operating practices [28 CFR § 35.105(a)]. In order to review what is actually done, as well as what is on paper as policy, it is important to involve not only administrators and senior managers but also program staff and participants. The entity must analyze the impact on persons with disabilities, recognizing that adverse effects are often inadvertent.

The Title II self-evaluation should have been completed by January 26, 1993 [28 C.F.R. § 35.105(a)], although recipients of Federal financial assistance have been responsible for compliance with Title II since January 26, 1992. Therefore, if discriminatory policies or practices are identified during the review process, they should be modified immediately. The Section 504 regulation at 49 CFR § 27.11(c)(2)(i)(ii) provides that recipients were to have completed the self-evaluation within 180 of the effective date of 49 CFR 27.

Both regulations require that recipients provide an opportunity for interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation by submitting comments [28 CFR § 35.105(b)]. Recipients must maintain the self-evaluation on file and make it available for public inspection for at least three years from the date the self-evaluation was completed [28 CFR § 35.105(c) and 49 CFR § 27.11(c)(3)]. It is the responsibility of the ADA/504 Coordinator to maintain required information in a form that will facilitate a prompt response to requests. Records kept must identify individuals who participated directly or indirectly in the review, the areas examined, whatever problems were discovered, and the corrections made as a result of the self-evaluation process [28 CFR § 35.105(c)].

Under Title II ADA at 28 CFR §35.105(d), if the STA has conducted a self-evaluation as required by Section 504, prior to the promulgation of the Title II ADA regulations in 1992, the STA is required to review only those programs established since the Section 504 self-evaluation was conducted, and new or modified policies or practices that were not included in an earlier self-evaluation. This differs from the Section 504 regulation at 49 CFR § 27.11(c) (2)(v), which requires recipients to establish a system for periodically reviewing and updating the self-evaluation. However, because most Section 504 self-evaluations were done years ago, many agencies reexamined all of their policies and programs with the enactment of the ADA. Programs and functions may have changed, and actions that were supposed to have been taken to comply with Section 504 may not have been fully implemented or may no longer be effective. (A glaring example of such an area of change is the entire realm of computers, now a significant part of nearly every aspect of services and programs.)

If a STA has not completed its Section 504 or ADA self-evaluation or made the necessary modifications to policies and procedures, it is recommended that it do so as quickly as possible. A sound practice is to implement a system of self-evaluation annually, biannually, and/or triennially, as part of the Title VI Equal Employment Opportunity Assurances to US DOT. Agencies that have met their deadlines are recommended to establish and maintain self-evaluation systems to provide on-going compliance reviews. Programs change, personnel leave, and technology improves, all necessitating a system of monitoring and transitioning. Each agency should identify the functional program areas that deliver services, programs and activities. In order to be most effective, the ADA/504 coordinator should utilize an interdisciplinary approach, whereby ADA/504 Liaisons are designated in each of the respective discipline areas (such as Planning, Right-of-way, Construction, Design, etc.) to bring their knowledge/expertise to the table on geometric design, construction tolerances, etc. It is very important that the planning, design, and construction, etc. staff be intimately involved/familiar with the agencies responsibilities and development of self-assessment, transition plan, policies and procedures, and that they take an active role to ensure that these responsibilities are ultimately carried out. This liaison is provided with the proper training, any technical assistance needed, and will be responsible for ensuring compliance with Section 504/ADA in their respective program areas. Each functional area needs a method of self-evaluation that is reported to the designated ADA Coordinator. For example:

- Facilities Services Section 504/ADA Liaison manages a process that reviews facilities annually for deficiencies, with ADA accessibility reviewed specifically. This allows for regional planners to submit facility work requests to obtain funding and provide corrections to ADA deficiencies that have become apparent since the ADA Transition Plan was developed. Reviews and facility improvements are reported to the agency ADA Coordinator annually.
- Design Program Section 504/ADA Liaison reported a Design Manual Supplement established to address ADA accessible facilities in all projects, including preservation projects, and add detectable warning surfaces to all sidewalk ramps or trail crossings, regardless of the jurisdictional responsibility for the facilities. (See attachment titled, "Addressing ADA Accessible Facilities on Road, Street, and Highway Projects.")

## Transition Plan

Recipients with 15 or more employees and public entities with 50 or more employees under Section 504 and ADA at 49 CFR § 27.11(c)(2)(iii)(iv)(v) & 28 CFR §35.150(d) respectively, are required to develop a transition plan when structural changes to existing facilities are necessary in order to make a program, service, or activity accessible to people with disabilities. Title II ADA public entities were required to develop the transition plan by July 26, 1992, with the removal of all physical barriers identified in the Plan must be completed as expeditiously as possible, but, in any event, by January 26, 1995.

Interested persons, including individuals with disabilities or organizations representing individuals with disabilities, are required to be provided an opportunity to comment on the transition plan. The plan must also be made available for public inspection for a period of three years.

The regulations require that, at a minimum, the transition plan:

- identify physical obstacles in facilities that limit the accessibility of the public entity's programs, services, or activities to people with disabilities;
- describe in detail the methods the entity will use to make the facilities accessible;
- provide a schedule for making the access modifications;
- provide a yearly schedule for making the modifications if the transition plan is more than one year long; and
- indicate the name of the official who is responsible for implementing the transition plan.

Recipients and public entities, including STAs, must provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan must be made available for public inspection.

Title II of the ADA at 28 CFR § 35.150(d)(2) provides that, if a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the ADA, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. For STAs, the transition plan covers both their buildings as well as pedestrian facilities in the right-of-way.

The Title II transition plan is required for programs and policies that were not previously included in a Section 504 transition plan [28 CFR § 35.150(d)(4)]. However, agencies that are covered under Section 504 are not shielded from obligations under that statute, such as deadlines for making structural modifications, merely because they have met the Title II transition plan requirements.

Title II of the ADA does not require the submission of transition plans to FHWA, nor does the regulation require that FHWA approve transition plans. However, FHWA can request that a recipient or public entity submit its transition plan as necessary for program or project oversight activities, as well as complaint investigations [49 CFR § 27.121] .

Because a STA may have jurisdiction over roads and highways, the transition plan must cover both its buildings and pedestrian rights-of-way and any other type of transportation facility the STA owns, operates or maintains. In developing transition plans, STAs must include all facilities that have been found to require structural modifications to achieve accessibility to its programs.

### *Action Steps for Transition Plan*

Notwithstanding regulatory requirements, recipients'/public entities' transition plans should reflect careful and thorough analysis of their facilities that require alteration using a wide range of information from a variety of sources. The action plan should be executed as follows:

- 1) Identify staff and/or consultants to review each facility for compliance. The ADA/504 Coordinator should be the lead staff member in the development and implementation of the transition plan so that efforts to achieve and maintain accessibility can be effectively coordinated throughout the STA and so that there is balance in the transition plan between STA programs and services, buildings and facilities, as well as pedestrian right-of-way facilities. The STA should form an ADA/504 advisory group or task force that will assist the ADA/504 coordinator in the development and implementation of the transition plan. The recipient/public entity can retain a consultant to also assist with the transition plan.
- 2) Establish the public involvement process by which the disability community and others will participate. The advisory group/task force should also include private citizens or representatives of other agencies with various forms of disabilities, or who will be impacted by the transition plan to make sure all needs are considered. The transition plan should reflect this input.
- 3) Identify all facilities used by each of the recipients'/public entities' programs and services. With respect to pedestrian right-of-way facilities in particular, include an inventory and/or map of streets, sidewalks, intersections that would need to be made accessible.
- 4) Map out the usage and specialized features of each facility. This includes walkways and approaches to each facility from parking lots, bus stops, and other transportation; doors and entrances, restrooms, vertical access (elevators and stairways), drinking fountains, play and picnic areas in parks, etc.
- 5) Choose a survey "tool" or list of standards. This must include evaluating for access by wheelchair users and other mobility-impaired people who would require the use of curb ramps. The recipient can also evaluate for access for visually, hearing and cognitively impaired people, if the transition plan also incorporates sidewalks, Accessible Pedestrian Signals or other pedestrian facilities besides curb ramps.
- 6) Incorporate the recipients'/public entities' capital improvement plans since new construction and planned alterations to pedestrian facilities may result in the incorporation of accessible features more easily and less expensively.
- 7) Identify funding and timelines. Except for the regulatory requirement of completing the transition plan by 1995, the recipients/public entities can set the timeline for installing accessible features as well as budget.

### *Elements of a Transition Plan*

FHWA has identified the following elements that contribute to a comprehensive transition plan:

- ***The name, title, office address and phone number of the recipient/public entity official responsible for the coordination, development and implementation of the transition plan. If there is an advisory committee/task force, the names and titles of those individuals should be listed as well.***
- ***A schedule or work plan that lists the steps to be taken to develop and implement the transition plan.***
- ***An inventory of buildings, facilities and pedestrian right-of-way locations (streets, intersections) to be made accessible;***
  1. ***Identify the type of modification required to achieve accessibility, such as curb ramps (it may be desirable to have separate curb ramp, sidewalk construction/repair or APS installation schedules).***

- **Prioritize of locations to be modified in the following order:**
  1. *State and local government offices and facilities (city hall, schools)*
  2. *Location of government services and transit facilities (bus stops, train stations)*
  3. *Locations of places of public accommodations/employers (shops)*
  4. *All other areas (residential)*
  
- **Specify Public Involvement efforts:**
  1. *Groups, Organizations, Individuals contacted*
  2. *Methods of Public Involvement (meetings, surveys, web site)*
  
- **Milestones based on intervals as required to monitor implementation**

In 2004, the Texas Department of Transportation developed its Self-Evaluation and Transition Plan. It also developed an initial prioritization plan with respect to the types of accessible pedestrian features to be installed and the locations (and conditions at locations that should get the highest priority). That plan is detailed below:

Priority	Criteria
1A	Existing curb ramp with running slope >12% AND Location near hospital, school, transit stop, govt. bldg, etc.
1B	No curb ramp where sidewalk or ped. path exists AND Location near hospital, school, transit stop, govt. bldg, etc.
2A	Existing curb ramp with running slope >12% (NOT located near hospital, etc.)
2B	No curb ramp where sidewalk or ped. path exists (NOT located near hospital, etc.)
3	No curb ramp and striped crosswalk exists
4	One curb ramp per corner and another is needed to serve the other crossing direction
5A	Existing curb ramp with either running slope >1:12 or insufficient landing
5B	Existing curb ramp with obstructions in the ramp or landing
5C	Existing curb ramp with any of the following conditions: a) cross slope >3% b) width < 36 inches c) no flush transition, OR Median/island crossings that are inaccessible
5D	Existing curb ramp with returned curbs where pedestrian travel across the curb is not protected
5E	Existing diagonal curb ramp without the 48" extension in the crosswalk
5F	Existing curb ramp without truncated dome texture contrast OR without color contrast
6	Pedestrian push button is not accessible from the sidewalk and/or ramp

It should be noted *that with respect to prioritization as detailed below, it is meant to prioritize according to the parameters of the prioritization as required by 28 CFR §35.150(d)(2) including, transportation, places of public accommodation, and employers, followed by walkways serving other areas.* For example, although a residential area without curb ramps may have several residents with disabilities, it would not take higher priority than a public library located at an intersection without curb ramps. However that residential area should be among the first residential areas to have curb ramps installed. Also, a train station that does not have curb ramps at or near its location would have a higher priority than a bus stop at a location with a low population density and lower usage. Other factors that recipients and public entities can use to develop and implement the curb ramp schedule or pedestrian right-of-way portion of the transition plan should include the following:

- Citizen requests or complaints regarding inaccessible locations known to the public entity before the development and implementation of the transition plan
- Pedestrian Level of Service (PLOS) analyses (pedestrian routes with higher level of use/PLOS rating may have a higher priority for accessible features than an area with a lower level of use/ PLOS rating)
- Specific project demand (A project with pedestrian facilities needs to be coordinated with the transition plan)
- Population density (areas with a high population density may have a higher priority for accessible features than an area with a low population density)
- Presence of Disabled Population (areas with a known disabled population such as a group home or special needs facility may have a higher priority for accessible features than an area without. **It is important note that lack of a disabled population in a recipient's/public entity's jurisdiction does not relieve the recipient/public entity of the ADA/504 requirement to develop and implement a transition plan**)
- Existence of accessible facilities (these facilities need not be included on the transition plan)
- Cost (can influence the timetable of installation of accessible facilities' according to available resources)

Recipients and public entities can incorporate other processes into the transition plan itself or vice versa, and can also be used to help develop and implement the transition plan. These processes include the following:

- procedure for installation of accessible facilities
- a curb ramps/pedestrian facility request procedure, form or hotline
- Pedestrian Master Plan or Bike-Pedestrian Plan
- STA Statewide Transportation Improvement Plan (STIP)
- MPO Transportation Improvement Plan (TIP)

#### Designation of an ADA/504 Coordinator

**The Section 504 regulation at 49 CFR § 27.13 and the Title II regulation at 28 CFR §35.107 provide that recipients with 15 or more employees, and at any public entity with fifty (50) or more employees must designate at least one employee to coordinate compliance with the respective regulations.** The public entity shall make available to all interested individuals the name, office address and telephone number of the ADA Coordinator, while a Section 504 recipient, at a minimum, must inform the public of the identity of its



Coordinator. The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the regulations and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities. Neither Title II ADA nor Section 504 limits a public entity's or recipient's obligation to ensure that all of its employees comply with the requirements of these regulations, but it ensures that any failure by individual employees can be promptly corrected by the ADA/504 Coordinator. The ADA/504 Coordinator can also ensure that the STA acts as one body with respect to ADA/504 compliance by promoting a uniform approach to achieving compliance with ADA/504 among the very diverse disciplines of the STA. Lastly, since there is usually an ADA/504 Coordinator for the entire State government, the ADA/504 Coordinator will serve as the STA's point of contact for that individual's State government ADA/504 compliance efforts.

The ADA/504 Coordinator must be knowledgeable of all ADA/504 issues that an STA deals with, particularly those involving pedestrian right-of-way facilities. The ADA/504 Coordinator must also be effective in building and maintaining relationships with the STA's external stakeholders, such as disability advocacy groups and organizations. The STA must give the ADA/504 Coordinator the authority needed to coordinate, respond and resolve all ADA/504 issues on behalf of the STA. Since STAs are organizations that perform a variety of tasks over a breadth of disciplines and professions, the STA can also appoint sub-level ADA/504 coordinators who will respond to issues in their regions and, in turn, will coordinate with a Statewide coordinator.

The STA can also appoint an ADA/504 Coordinator for each discipline, division or unit of the STA (planning, design, construction, right-of-way, environment, public involvement, human resources) who will also coordinate with the Statewide STA ADA/504 Coordinator. That arrangement can be beneficial to the STA, if, for example, the Statewide ADA/504 Coordinator has primary experience in design, but has minimal or no experience in providing employment accommodations. In that case, the Statewide coordinator can delegate to, or collaborate with, the sub-coordinator in human resources, who may be much more experienced in that area.

The ADA/504 Coordinator is charged with the responsibility for implementing, monitoring, and ensuring the agency's compliance with Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. An example of ADA/504 Coordinator responsibilities are:

- Monitoring the department's current policies and practices for implementing ADA/504.
- Identifying shortcomings in compliance and developing remedies.
- Evaluating remedial steps taken to eliminate the effects of discrimination.
- Monitoring complaint procedures that incorporate appropriate due process standards and providing for prompt and equitable resolutions of complaints alleging an action prohibited by ADA/504.
- Processing the disposition of complaints filed under ADA/504.
- Ensuring agency compliance with ADA/504.
- Collaborating and coordinating with the heads of major divisions and departments to enable ADA/504 compliance efforts.
- Establishing and maintaining collaborative relationships with critical external stakeholders, such as disability advocacy groups and organizations.
- Monitoring the agency's ADA/504 Transition Plan to ensure that all department facilities remain in compliance with applicable accessibility standards.
- Monitoring established procedures to ensure that requested auxiliary aids are provided for persons

- Conducting annual reviews of ADA/504 program areas.
- Conducting ADA/504 training programs for agency managers and employees.
- Preparing a report of ADA/504 accomplishments and problem areas for the Federal Highway Administration Annual Assurance Report.
- Monitoring the preparation of ADA/504 information for dissemination to the general public, including the "Notice to the Public" offer to provide reasonable accommodation, upon request.
- Identifying, investigating, and eliminating ADA/504 discrimination when found to exist.

#### Provision of Reasonable Accommodations for Employment

Title II of the ADA at 28 CFR § 35.140 and Section 504 at 49 CFR § 27.19 provide that public entities and recipients (as well as sub-recipients), as a condition of USDOT Federal financial assistance, shall comply with the requirements of Section 504 and Title II of the ADA, as well as Title I of the ADA. Compliance with the Equal Employment Opportunity Commission's (EEOC) Title I regulations is required as a condition of compliance with Section 504 for USDOT recipients.

#### Adopting Grievance/Complaint Procedures for Disability Discrimination Complaints

Title II of the ADA at 28 CFR § 35.107(b), requires public entities with 50 or more employees to adopt and publish a grievance procedure, while Section 504 at 49 CFR § 27.13(b) requires that a recipient of 15 or more employees "establish operating administration procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by (Section 504)." The Title II requirements regarding grievance procedures have been in effect since January 26, 1992, while Section 504 has been in effect since 1979.

The ADA/504 Coordinator can also ensure that the STA acts as one body with respect to ADA/504 compliance by promoting a uniform approach to achieving compliance with ADA/504 among the very diverse disciplines of the STA. Lastly, since there is usually an ADA/504 Coordinator for the entire State government, the ADA/504 Coordinator will serve the STA's point of contact for that individual's State government ADA/504 compliance efforts.

The ADA/504 Coordinator must be knowledgeable of all ADA/504 issues that a STA deals with, particularly those involving pedestrian right-of-way facilities. The ADA/504 Coordinator must also be effective in building and maintaining relationships with the STA's external stakeholders, such as disability advocacy groups and organizations. The STA must give the ADA/504 Coordinator the authority needed to coordinate, respond and resolve all ADA/504 issues on behalf of the STA. Since STAs are organizations that perform a variety tasks over a breadth of disciplines and professions, the STA can also appoint sub-level ADA/504 coordinators who will respond to issues in their regions and, in turn, will coordinate with a Statewide coordinator. The public entity may use a grievance procedure that is already in place. STAs and their sub-recipients should include language in their notices of nondiscrimination that states that individuals and groups can file a grievance or complaint with the ADA/504 Coordinator.

The STA's existing procedure for complaints from the public at-large can be adopted. The STAs or sub-recipient should feel free to adapt the grievance procedures requirements of Title II and Section 504 to existing procedures as required by other laws or regulations. However, an ADA/504 grievance procedure should include the following components:

- a detailed description of the procedures for submitting a grievance;
- a two-step review process that allows for appeal within the STA or sub-recipient;
- reasonable time frames for review and resolution of the grievance;
- records of all complaints submitted, responses given, and steps taken to resolve the issue; and
- An alternative procedure if the complainant alleges that the ADA coordinator or other STA or sub-recipient official with responsibilities regarding the grievance procedures process are a part of the alleged discrimination.

Individuals' rights to file complaints with Federal agencies are independent from rights to submit complaints through State and local agencies' grievance procedures. Therefore, if a public entity receives a complaint, it should be processed through established agency procedures. However, notification of specific processes available to file with FHWA shall be provided to complainants. As noted in the FHWA responsibilities section, any complaint against a STA shall be investigated by FHWA, while complaints received by FHWA against STA sub-recipients will be referred to the STA. The STA can choose to investigate the complaint under their grievance/complaint procedures or refer the complaint back to FHWA for investigation. Complaints received by STAs, including those filed against STAs, can be investigated under their grievance procedures.

#### Provision of Accessible Programs, Services and Activities

Title II of the ADA 28 CFR § 35.149 through § 35.151 and Section 504 at 49 CFR § 27.75 provides that recipients and public entities provide "Program Access." Program access means that recipients/sub-recipients must ensure that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Recipients/sub-recipients 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.

#### Provision of Accessible Communications

Title II of the ADA at 28 CFR § 35.160, 35.161, 35.163 and Section 504 at 49 CFR § 27.7 provide that recipients and public entities take such steps as may be necessary to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. This may entail furnishing appropriate auxiliary aids and services where necessary, giving primary consideration to the requests of persons with disabilities.

Telecommunication devices for the deaf (TDDs) shall be used to communicate with individuals with impaired hearing or speech. STAs developing and/or implementing a "511" traveler information service shall also consider the needs of individuals that are deaf or hard of hearing.

In addition, communications via websites shall be accessible to individuals with visual or other impairments that inhibit the ability to access the STAs' websites.

#### Monitoring/Enforcement

The Section 504 regulation at 49 CFR § 27.121 requires recipients/sub-recipients to maintain appropriate records pertaining to Section 504/ADA implementation/compliance and make such records available for inspection/review by responsible Federal officials (i.e., FHWA, FTA, DOJ, et al).

### Maintenance of Accessible Features

The Title II ADA regulation at 28 CFR § 35.133 requires that recipients/sub-recipients must, to the maximum extent feasible, ensure that facilities are properly maintained and free of obstructions. Potential obstructions of a pedestrian facility may include sidewalk furniture, utility poles/equipment, tree roots, potted plants, snow/ice, inoperable elevators/lifts, etc. Facilities are required to be readily accessible to and usable by persons with disabilities. Temporary obstructions or isolated instances of mechanical failure would not be considered in violation; however, prolonged inaccessibility would be a violation of the ADA.

### Other Program Requirements

There are two other regulations in 23 CFR that are outside of Title II ADA and Section 504 obligations that pertain to accessibility for individuals with disabilities. Those regulations are 23 CFR Part 652 ("Pedestrian and Bicycle Accommodations and Projects") and 23 CFR Part 1235 ("Uniform System for Parking for Persons with Disabilities")

### Pedestrian and Bicycle Accommodations and Projects

This regulation at 23 CFR § 652.5 provides that the special needs of individuals with disabilities shall be considered in all Federal aid projects that include pedestrian facilities. Other sections of 23 CFR 652.9 establishes the provision of Federal-aid for such projects (100 percent Federal aid can finance the construction of independent walkway projects on the right-of-way or right-of-way can be acquired for the purpose of eligibility, or can be included as incidental features of highway projects financed with funds for those projects (except for Interstate construction Federal-aid). 23 CFR Part 652 also provides that pedestrian projects be included the MPO's TIP, and sets forth eligibility requirements for these projects.

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### References:

1. "Title II Technical Assistance manual," U.S. Department of Justice, Washington, D.C. (2003).
2. "Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools," U.S. Department of Education, Office of Civil Rights, Washington, D.C. 277pp.
3. "ADA Title II Action Guide: For State and Local Governments;" Adaptive Environments Center, Boston, MA; LRP Publications: Horsham, PA (1992); 157pp.
4. ADA Self-Evaluation and Transition Plan, Texas Department of Transportation, Austin, TX, (2004), 22pp.
5. Washington State Department of Transportation; ADA/504 Plan and Policy, Olympia, WA.

**IMPLEMENTATION****IV. Contract Requirements****STA Title II ADA and Section 504 Program Requirements**

## Section 504 Assurances

The USDOT Section 504 regulation at 49 CFR § 27.9 provides that each recipient (and sub-recipient) of Federal financial assistance shall develop, as a condition to approval or extension of any Federal assistance, written assurances that its programs and activities will be conducted/operated in compliance with all requirements of Section 504 of the Rehabilitation Act, as amended, and Title II of the Americans with Disabilities Act of 1990. The regulation also requires that the assurance provided shall obligate the recipient to comply with Section 504 for the period during which the Federal financial assistance is extended to the program. With respect to property as a form of Federal Financial Assistance, the requirements apply not only to the current recipient but also entities that buy the property or receive the property in the form of a transfer for as long as the property is used for the purpose for which the Federal financial assistance was provided or for a similar purpose. These assurances should be inserted into any application, contract or other instrument that a recipient signs and submits to the STA and/or FHWA in order to receive Federal Financial Assistance. Below is a sample assurance:

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the [STA], desiring to avail itself of federal financial assistance from the US Department of Transportation, hereby gives assurance that no qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives or benefits from this federal financial assistance.

The [STA] further assures that its programs will be conducted, and its facilities operated, in compliance with all the requirements imposed by or pursuant to 49 CFR Part 27, 28 CFR § 35 and 42 USC § 12101-12213.

