

# Fact Sheet on *Americans with Disabilities Act Transition Plans in Transportation*

## What is the Americans with Disabilities Act (ADA)?

**Americans with Disabilities Act:** Title II prohibits state and local governments from discriminating against persons with disabilities or from excluding participation in or denying benefits of programs, services or activities to persons with disabilities. This title also requires public entities with 50 employees or more to create and regularly update a ADA Transition Plan. Title III requires places of public accommodation to be accessible to and usable by persons with disabilities. The term public accommodation as used in the definition often is misinterpreted as applying to public agencies, but the intent of the term is to refer to any privately funded and operated facility serving the public.

**Rehabilitation Act of 1973:** Section 504 of the Rehabilitation Act of 1973 is a national law that protects *qualified* individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency. Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.

Important Considerations regarding the Americans with Disabilities Act (provided by FHWA)

- The scope of Title II covers all activities of state and local governments regardless of the government entities size or receipt of federal funding.
- For purposes of complaint processing under the ADA and Rehabilitation Act, the FHWA and State DOTs are responsible for issues involving curb cuts, parking (non-law enforcement), signs and signals, accessible routes on public sidewalks and passageways and other issues related to highways, streets, and roads.
- Altered Facilities: In *Kinney v. Yerusalim, Pennsylvania State Department of Transportation*, the Circuit Court ruled that resurfacing of road is an "alteration" and the installation of curb ramps is required. If an alteration makes a facility more usable, such increased utility must be made accessible to disabled. Maintenance work such as filling pot holes is not considered an alteration.
- New Facilities: Facilities constructed or altered after January 26, 1992, must be readily accessible. Facilities that conform to the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) are considered accessible.

## What are the Regulations?

The coverage of ADA can be broken down in three main categories. These include employment activities (which may also be covered by the employment rules of Title I of ADA), programs and activities involving the general public, and public services directly administered by the entities for program participants. In addition to these, the rule covers communication with the public through telephone contact or any other use of the public facilities.

**Transition Plans** - Where structural modifications are required to achieve program accessibility, a public entity with 50 or more employees must do a transition plan by July 26, 1992, that provides for the removal of these barriers. Any structural modifications must be completed as expeditiously as possible, but, in any event, by January 26, 1995. A copy of the transition plan must be made available to the public. The transition plan should cover at a minimum:

- List of physical barriers in facilities
- Detailed outline of methods to remove barriers and costs

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- Time schedule for taking steps to comply and report on status of implementation
- Name of official responsible for implementing

### **Which Groups are Addressed?**

In determining obligation under ADA, it's important what constitutes a disability. The term "disability" means:

- (a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual;
- (b) A record of such an impairment; or
- (c) Being regarded as having such an impairment.

In such a case that an individual meets any one of these three tests, he or she is considered an individual with a disability for coverage under the ADA.

An "impairment" is any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. A "substantially limiting impairment" must be one that limits a major life activity. Such activities include caring for oneself, performing manual tasks, and walking. Minor or trivial impairments are those expected to be of temporary duration and are not regarded as disability for the purpose of the ADA.

### **How Does ADA Apply to Transportation?**

Concern for citizens with disabilities should be integrated into every transportation decision from the first thought about a transportation plan to post-construction operations and maintenance, and all projects should be ADA compliant. For existing transportation facilities, an ADA Transition Plan is required by Department of Justice rules to address the following:

- (1) For public entity with responsibility or authority over streets, roads or walkways, its ADA 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
- (2) The ADA Transition Plan shall identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities
- (3) The ADA Transition Plan shall describe the methods that will be used to make the facilities accessible
- (4) The ADA Transition Plan shall specify the schedule for taking the steps necessary to achieve compliance with the ADA and, if the time period of the ADA Transition Plan is longer than one year, identify steps that will be taken during each year of the transition period.

### **What Are Other Communities Doing in Addressing ADA Compliance?**

Most city/county ADA Transition Plans include the following components.

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### ADA Transition Plan

A transition plan should contain at a minimum – a list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities; a detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible; the schedule for taking the necessary steps to achieve compliance with Title II (If the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period); and, the name of the official responsible for the plan's implementation.

### Data Collection

Statistical data on demographics, including citizens with disabilities. Also, an inventory should be conducted to determine what physical barrier exist within the city/county.

### Self-Evaluation of Compliance

City/Counties should review procedures and evaluate current activities related to ADA compliance and also update ADA project status on a regular basis. All information related to ADA compliance should be documented.

### Annual Reports and Public Dissemination

ADA Transition Plans must be made available to the public. Plans should be posted on the city/county website and are often made available in formats for disabled/LEP individuals. All efforts should be made to ensure new facilities are ADA compliant and that planning meeting are accessible to citizens with disabilities.

### Complaint Procedure

Establish a complaint process whereby citizens are properly notified of their rights and the process for filing a nondiscrimination complaint. Such procedures also outline responsibilities of the city executives in addressing such complaints. Complaints may also be filed directly with the Federal Highway Administration.